

August 24, 2020

City of Aurora
Mayor's Office of Economic Development
5 South Broadway
Aurora, IL 60505
ATTN: Trevor Dick, ACP, LEED AP
Director of Development Strategy and Facilitation

Re: Traffic Impact Analysis Addendum – Orchard Road & Bushwood Drive/Toyota Property Access

Dear Mr. Dick:

This letter agreement between Iteris, Inc. (CONSULTANT) and the City of Aurora (CLIENT) has been prepared in response to your request for additional traffic engineering services for the Toyota property on Orchard Road.

Included in this AGREEMENT is our proposed scope of work and estimated cost based on the comments received by the City of Aurora and Kane County Division of Transportation (KDOT) on the Traffic Impact Analysis, Toyota Property, prepared by Iteris in February 2020.

The study will be updated in accordance with applicable laws, statutes, ordinances, and administrative rules and regulations as well as accepted traffic engineering standards and guidelines including the Institute of Transportation Engineers' (ITE) Traffic Engineering Guidelines Manual, ITE Trip Generation Manual, the Manual on Uniform Traffic Control Devices (MUTCD), KDOT requirements, IDOT requirements and other appropriate guidance materials. This agreement summarizes the following key items:

- Project Understanding
- Scope of Services
- Project Team
- Cost Estimate and Terms

Project Understanding

The overall purpose of this project is to conduct a traffic impact analysis (TIA) for the development concept located on the east side of Orchard Road between I-88 and Sullivan Road in Aurora, Illinois. The City is particularly interested in the possibility of installing traffic signal control at the intersection of Orchard Road and Bushwood Drive in conjunction with the development. This addendum will examine alternatives to a traffic signal installation at the subject intersection including a Right-In/Right-Out (RIRO) access and a Right-In/Right-Out/Left-In (3/4) access.

Scope of Services

The following tasks will be conducted as part of the effort:

Task 1. Project Management – This task will include managing and organizing project staff to execute the following tasks.



Task 2. Future Conditions Traffic Analysis for Alternative Configurations at Orchard Road and Bushwood Drive – Iteris will update the Traffic Impact Analysis prepared in February 2020 to examine alternatives to a traffic signal installation at the intersection of Orchard Road and Bushwood Drive. The study addendum will include an access analysis at the subject intersection configured as a Right-In/Right-Out (RIRO) access and a Right-In/Right-Out/Left-In (3/4) access. In addition, existing traffic will be forecast 10 years and 20 years based on growth rates provided by CMAP for both scenarios. Any significant impacts forecast to be caused by the project will be highlighted, together with possible project design features and/or mitigation measures.

Task 3. Documentation and Response to Comments – An addendum to the TIA report produced in February 2020 documenting the methodologies, findings, and recommendations of the traffic analysis will be submitted to the City for review. Iteris will respond to two sets of consolidated comments from City staff and prepare a final report.

Deliverables

- *Draft Traffic Impact Analysis Report - Addendum*
- *Final Traffic Impact Analysis Report - Addendum*

Task 4. Meetings – It is assumed that Iteris will attend up to four (4) two-hour team meetings, conference calls and/or public meetings (e.g., public hearings/presentations). Additional meetings would be attended, as needed, on a reimbursable basis at \$575 per meeting.

Project Team

Iteris has resources that can be devoted to this project immediately. Alex Garbe, with over 15 years of experience will serve as project manager and point of contact for this project.

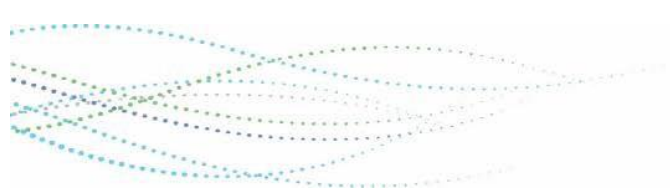
Cost Estimate and Terms

Iteris, Inc. proposes to complete the services outlined above on a lump sum basis not to exceed **\$17,500**.

The listed fees are based upon the scope of work presented above and includes the cost of all related technical and administrative services, data collection, and other miscellaneous expenses. This proposal is submitted subject to the successful negotiation of a mutually agreeable contract between the Parties. A draft report will be provided for review within 6 weeks of the date of notice to proceed.

Iteris has revised the attached terms and conditions as you requested. Please print, sign, and return one copy to Iteris and keep one for your records. If you have any questions or need additional information, please do not hesitate to contact the project manager, Alex Garbe, at (815) 621-2979 or agarbe@iteris.com. We appreciate the opportunity to provide this proposal and look forward to working with you.

SIGNATAURES ON THE FOLLOWING PAGE



Sincerely,



Alexander S. Garbe, PE, PTOE
Iteris, Inc.

Authorized by:

SIGNATURE:

PRINTED NAME

8/14/20

Date

Date



STANDARD TERMS AND CONDITIONS FOR SERVICES

1. Entire Agreement/Binding

Client and Iteris (each a "Party" and collectively "Parties") expressly agree that the Proposal Letter or Services Agreement executed by both Parties (the "Agreement"), the exhibits and attachments cited therein including these Standard Terms and Conditions for Services constitute the complete and entire understanding between the Parties and supersede all prior agreements, proposals, representations, statements, or understandings whether written or oral. Client and Iteris each binds itself, its officers, employees, successors and assigns to this Agreement. This Agreement may be amended only by a written instrument signed by both Parties. In the event of conflict the order of precedence shall be: (i) a written amendment signed by both parties; (ii) the Proposal Agreement or Services Agreement signed by both parties and any Special Terms and Conditions cited therein; then (iii) these Standard Terms and Conditions for Services.

2. Scope of Services

The Scope of Services to be performed by Iteris shall be as defined in the corresponding section of the Agreement and/or the attached Exhibit A Statement of Work.

3. Invoice Procedures and Payment

Iteris shall submit invoices to Client for work accomplished during each invoicing period, which is typically a fiscal month.

Invoices shall be submitted by Iteris as soon as possible after the end of the invoicing period in which the work was accomplished and shall be due and payable by Client in compliance with the Illinois Prompt Payment Act, 50 ILCS 505/1.

Pursuant to the Illinois Prompt payment act, Client has thirty (30) days from the date the invoice is delivered to the Client at the address specified herein by mail, courier or elective means, to approve an invoice. Client hereby agrees that payment as provided herein will be made for said work within thirty (30) days of Client's approval. ~~Client hereby acknowledges that unpaid invoices shall accrue interest at a rate of 1.0% per month, or the maximum allowed by law, beginning thirty (30) days after Client's approval of invoice. Iteris reserves the right to suspend all Services under this Agreement without notice or penalty if an invoice remains unpaid forty five (45) days after approval of invoice, which suspension shall remain in effect until all unpaid invoices are paid in full.~~

In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

If Client has provided a retainer for the full Agreement amount, invoice amounts will be deducted from retained amounts until the retained funds are exhausted. If Client has provided a retainer for less than the full Agreement amount, Client shall pay invoice amounts when due to restore the retainer through the completion of the Agreement. If retainer becomes exhausted at any time, Iteris reserves the right to suspend all Services without notice or penalty, which suspension shall remain in effect until all unpaid invoices are paid in full and retainer is restored.

4. Term, Abandonment/Cancellation of Work and Termination Term.

Iteris' obligations to perform under this Agreement shall extend from the Start Date indicated in the Schedule section of this Agreement until completion of the Scope of Services, or termination by either party, whichever is later.

Termination, Abandonment/Cancellation. In the event the services of Iteris called for under this Agreement, is/are suspended, cancelled, terminated or abandoned by the Client, Iteris shall be given seven (7) days prior written notice of such action and shall be compensated for the professional services provided up to the date of suspension, termination, cancellation or abandonment in accordance with the provisions of this Agreement, including as applicable reimbursable expenses or costs incurred prior to receipt of notice of termination, cancellation or abandonment for non-cancellable or non-returnable equipment, material or services.

5. Cost Estimates

Client hereby acknowledges that Iteris cannot warrant that any cost estimates provided by Iteris for goods to be supplied or services to be performed outside this Agreement will not vary from actual costs incurred by the Client.

6. Standard of Care

Iteris will perform the Services under this Agreement in a manner consistent with the degree of care and skill ordinarily exercised by others performing the same or similar services under similar circumstances.

7. Indemnification

To the extent allowed by law, Iteris agrees to indemnify Client and hold harmless from and against liability for all claims, losses, damages, and expenses, including reasonable attorney's fees, to the extent such claims, losses, damages, or expenses are caused by Iteris negligent acts, errors, omissions, or willful misconduct. ~~In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligent acts, errors, or omissions of Client and Iteris, such claims, losses, damages or expenses shall be borne by each party in proportion to its respective responsibility.~~

8. Limit of Liability

Notwithstanding anything to the contrary in this Agreement, neither Iteris nor Client shall be liable to the other for any consequential, special, incidental, indirect, exemplary, punitive or multiple damages, or damages arising from or in connection with loss of use or loss of revenue or profit and each party hereby releases the other from any such liability; provided, however, that this limitation shall not apply to claims of third parties for such damages for which a party is required to indemnify the other party above.

The limit of liability of Iteris to the Client for any cause or combination of causes shall be, in total amount, limited to the compensation paid by Client to Iteris under this Agreement.

9. Insurance

Iteris shall at all times carry Workers' Compensation insurance as required by statute in the state where work is performed; commercial general liability insurance including bodily injury and property damage; automobile liability coverage; and professional liability coverage. Insurance certificates will be provided to the Client upon request.

10. Disputes

If a dispute arises out of or relates to this Agreement or the breach thereof, the parties will attempt to settle the matter between themselves. If no agreement can be reached the parties agree to use mediation with a mutually agreed upon mediator before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, the prevailing party will be entitled to reimbursement of all reasonable costs and attorneys' fees.

11. Schedule Extension/Force Majeure

Neither Party shall be liable for failure to perform any of its obligations under this Agreement during any period in which such party cannot perform due to circumstances beyond its reasonable control including but not limited to fire, flood, earthquake, or other natural disaster, war, embargo, riot, or the intervention of any government authority, provided that the party so delayed immediately notifies the other party of such delay. In the event of such occurrence, the parties shall negotiate a reasonable schedule under which any remaining services shall be performed.

12. Intellectual Property

With the sole exception of specifically marked reproducible materials subject to the Limited Copyright License herein, all worldwide right, title and interest in and to any and all Intellectual Property conceived, invented, authored or otherwise made by or on this Agreement shall remain the sole and exclusive property of Iteris, its successors and assigns unless licensed or assigned by Iteris pursuant to a separate written instrument. The term "Intellectual Property" shall be construed broadly to include all forms of

STANDARD TERMS AND CONDITIONS FOR SERVICES

intellectual property including without limitation all inventions, discoveries, designs, plans, improvements, trademarks, service marks and copyrights in drawings, computer programs, architectural works and in all other original works of authorship.

13. Ownership and Reuse of Documents

a. All drawings, specifications, test reports and other materials or work products which have been prepared or furnished by Client to Iteris under this Agreement shall remain Client's property. Client shall make available to Iteris copies of these materials as necessary for Iteris to perform its obligations under this Agreement.

b. All deliverable documents, including but not limited to reports, drawings, analyses, plans, etc., provided by Iteris to Client under this Agreement are the instruments of professional service of Iteris, who shall retain all rights of intellectual property attached thereto. Iteris grants Client a limited license to use, copy, modify, distribute, and authorize others to do so on behalf of the Client such deliverable documents. Iteris shall not be liable for any use of the documents for purposes other than specified in the Scope of Services for this Agreement or for any modifications made by others.

14. Construction Services

If, under this Agreement, professional services are provided during the construction or implementation phase of a project, Iteris shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work; nor shall Iteris be responsible for the Contractor's failure to carry out the work in accordance with contract documents or for the Contractor's failure to comply with applicable laws, ordinances, rules or regulations. Client agrees to require that Iteris be named as an additional insured on insurance coverages provided by Contractors on the project.

15. Governing Law

This Agreement shall be governed by and construed according to the laws of the State where the work is located.

16. Relationship of Parties

The Parties hereto expressly understand and agree that each Party is an independent contractor in the performance of each and every part of this Agreement, and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither Party nor its agents or employees are the representatives of the other party for any purpose, and neither party has the power or authority as agent, employee, or any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

17. Notices

Notices under this Agreement shall be sufficient only if: (i) personally delivered; (ii) delivered by a major commercial delivery courier service; (iii) mailed, postage or charges prepaid, by certified or registered mail, return receipt requested; or (iv) faxed or emailed with a confirmed receipt to a Party at its fax or email address last provided to the other Party. If not received sooner, notice by registered mail shall be deemed received five (5) business days after deposit in the U.S. mail.

18. Confidentiality

It is understood and agreed by the Parties that specific **proprietary** reports and other disclosures of non-public information required by this Agreement, and any changes which may be effected thereto, are considered by both Parties to be confidential, proprietary or otherwise sensitive ("Proprietary Information"). The Parties, each of which may be a "Disclosing Party" or a "Receiving Party" from time to time, agree to disclose the Proprietary Information only to their employees, officers, directors, consultants, contractors, affiliates, advisors or agents (collectively, the "Representatives") who have a need-to-know for that Purpose and who are bound to confidentiality by this or an equivalent agreement, and to maintain the Proprietary Information in confidence using the same degree

of care to avoid disclosure thereof as the Receiving Party employs on its own Proprietary Information of like importance, but in no case less than reasonable care. In addition, the parties agree that the Receiving Party shall not reverse engineer, disassemble, decompile, or otherwise analyze the design or construction of any equipment, component, or software without the prior written consent of the Disclosing Party. This Agreement shall pose no such confidential obligation upon either party with respect to any portion of the received Proprietary Information which: (i) is possessed by the Receiving Party at the time of the disclosure as evidenced by written or other tangible records; (ii) is independently developed by the Receiving Party as evidenced by written or other tangible records; (iii) is hereafter rightfully furnished to the Receiving Party by a third party without restriction on disclosure; (iv) is now, or which hereafter becomes, generally known or available through no act or failure to act by the Receiving Party; (v) is released from confidentiality in writing by the Disclosing Party, or (vi) is disclosed in response to a valid judicial order, but only to the extent of and for the purposes of such order; provided however, that the Receiving Party shall first notify the Disclosing Party in writing of the order and permit the Disclosing Party to seek an appropriate protective order.

The Receiving Party agrees to promptly return or certify destruction of all copies of any received Proprietary Information and of any additional documents in any media containing any of the disclosed Proprietary Information, upon termination of this Agreement or written request of the Disclosing Party. The obligations to protect Proprietary Information recited above shall survive any such termination for a period of three (3) years after the date of termination of this Agreement for any reason.

19. Hazardous Waste, Materials or Substances

Unless otherwise specifically provided in this Agreement, Iteris shall not be responsible for or have control over the discovery, presence, handling, removal, transport or disposal of hazardous waste, materials or substances in any form on the project site.

20. Waiver

Any failure by either party to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and either party may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

21. Assignment

Neither the Client nor Iteris will assign or transfer its interest in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld.