



January 28, 2025

E-mail: BauerJ@aurora.il.us

Jason Bauer
Associate Director of Public Works/Assistant City Engineer
City of Aurora
Department of Public Works/Engineering Division
77 South Broadway
Aurora, Illinois 60505

RE: Development of Safety Training Matrix & Safety Orientation Training

Dear Mr. Bauer,

Thank you for the opportunity for Hygieneering, Inc. (Hygieneering) to provide professional environmental, health, and safety consulting services to the City of Aurora.

This proposal is in response to our recent conversation regarding your need for assistance in developing a safety training matrix and safety orientation training for your division.

Scope of Work

Hygieneering proposes the following professional services:

Safety Training Matrix & Safety Orientation Training

- A. Hygieneering will provide a Senior Safety Professional to develop a safety training matrix and safety orientation training for your division.
- B. Hygieneering anticipates our activities to include, but not limited to, the following:
 - Onsite meetings with the client discussing roles and responsibilities to be included in the safety training matrix
 - Onsite meetings with the client discussing an outlined for safety orientation training
 - Office time creating the safety training matrix and safety orientation training
 - Onsite train-the-trainer training regarding the newly developed safety orientation training program

Project Deliverables

Hygieneering will provide the final safety training matrix and safety orientation training program electronically (e.g., Microsoft Word, Excel, PowerPoint) for future updates and maintenance, as well as in PDF.

Project Staffing & Project Management

- A. Hygieneering anticipates this project will be performed by the following Hygieneering team member:
 - Abigail Scott – Senior Safety & Health Consultant
- B. Hygieneering anticipates project management oversight to be provided by the following Hygieneering team member:
 - Kevin Konkey, CSP, CIT, CHMM – President

Qualifications of Hygieneering team members have been included in **Attachment A** for reference purposes.

Cost of Services

Hygieneering proposes to conduct the scope of work, as discussed above, for a fixed fee of \$26,595.00, plus a 3% credit card processing fee, if applicable.



Authorization and Acceptance

Please review the following terms and conditions and do not hesitate to contact us with any questions. To formally retain the services as referenced in this proposal, please sign and provide the required accounting information in the designated area below and email this document back to my attention at kkonkey@hygieneering.com. We will then proceed accordingly in scheduling this important project. We look forward to meeting and exceeding your professional expectations for this project's performance.

Respectfully,
Hygieneering, Inc.

Kevin M. Konkey, CSP, CIT, CHMM
President

ACCEPTANCE BY: City of Aurora

Signature

Print Name & Title

Date

***Hygieneering is not authorized to schedule or initiate work without the following information:**

| FOR ACCOUNTING USE | | | |
|---------------------------------|--|-----------------------------|--|
| Accounts Payable Contact Name: | | Do you require a PO Number? | |
| Accounts Payable Phone Number: | | PO Number: | |
| Accounts Payable Email Address: | | | |

Hygieneering, Inc. is a Woman Owned Business Enterprise and maintains annual certification as such through the WBENC (Women's Business Enterprise National Council). We are also certified as a FBE (Female Business Enterprise) through the Illinois Department of Central Management Systems (CMS). Unless stated otherwise, all our work is 100% WBE. If you need or would like a copy of our current WBE/FBE certification, please let us know and we will be happy to forward a copy of our certification letter(s).

HYGIENEERING, INC.
PROPOSAL/CONTRACT TERMS AND CONDITIONS AGREEMENT

This Proposal/Contract Terms and Conditions Agreement (this "**Agreement**"), dated as of January 28, 2025 (the "**Effective Date**"), is by and between Hygieneering, an Illinois corporation, ("**Service Provider**") and the City of Aurora, and Illinois home rule municipal corporation, ("**Client**" and together with Service Provider, the "**Parties**", and each a "**Party**").

WHEREAS the terms and conditions contained in this Agreement are acknowledged and understood to be integral to all agreements where the Client seeks to retain Hygieneering for any and all Professional Services; and

WHEREAS Customer desires to retain Service Provider to provide the said services, and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Client agree as follows:

1. **PROPOSAL.** Any and all Proposal Pricing, Scope of Work, and Terms and Conditions shall remain valid offers to Client for a period of sixty (60) days from the date of Service Provider issuing said offer. The terms and conditions contained in this Agreement shall govern the relationship of the Parties in all agreements that are utilized by the Client to retain any and all services of the Service Provider. No amendment to or rescission, termination, cancellation, or discharge of this Agreement or any Service Provider Proposal is effective unless it is in writing, identified as an amendment to or rescission, termination, cancellation, or discharge of this Agreement or any Service Provider Proposal and signed by an authorized representative of each party to this Agreement. Any statement or representation by an authorized representative of the Client to an authorized representative of the Service Provider to commence performance in any manner under this Agreement or subsequent agreements prior to any written acceptance of any changes or modifications by the Service Provider shall constitute an acceptance by the Client to the terms and conditions of this Agreement and the Service Provider's initial proposal for services. Terms of Purchase Orders and Client Contracts issued by the Client that are received by the Service Provider after verbal or email authorization to commence work has been issued by the Client or after Client has signed Service Provider Proposal that contain Terms that conflict with Service Provider Proposed Scope of Work, Fees, Conditions and or these terms and conditions may not be acceptable.
2. **ADDITIONAL REQUESTED SERVICES.** The scope of the performance by the Service Provider shall be expressly limited to the terms of this Agreement, as stated above. Any changes or additions in service must be in writing..
3. **ESTIMATIONS.** The Client acknowledges and accepts that any and all estimates, opinions, and/or statements of expected costs of environmental construction, remediation, demolition, or abatement issued by the Service Provider are expressly and solely the Service Provider's professional design judgment. Such estimates, opinions, and/or statements by the Service Provider are intended to serve only to as a general guidance to the Client, not as binding offers or guarantees. Actual contractor pricing will be determined by specialty contractor labor, material, contractor bids, and current market conditions. The Client acknowledges and accepts that services and projects involving conceptual development may not be fully definable at the time of initial planning by the Parties. For that reason, the Service Provider may discover new facts or conditions, during the course of its performance, that it may deem to require a modification or amendment to the agreed performances. Should the Service Provider make such a finding, the Service Provider will promptly notify the Client of such new facts or conditions and require that the scope and cost of performance be revised in order to continue performance.
4. **COMPENSATION.** The Client acknowledges and accepts that it shall pay the Service Provider throughout the course of performance, in accordance with any and all charges contained in the invoices created by the Service Provider. All invoices by the Service Provider are presumed to accurately reflect the costs of performance unless the Client submits a written dispute to the Service Provider within 10 days of the issuing date of the said invoice. The Client shall render full payment of any invoiced amount in accordance with the Illinois Local Government Prompt Payment Act. Failure by the Client to render full payment to the Service Provider when due shall entitle, but not require, the Service Provider to suspend or terminate its performance under this Agreement. Should the Service Provider exercise its option to suspend or terminate performance, the Client waives any and all claims or rights it might otherwise have against the Service Provider as a direct or indirect result of such suspension or termination.
5. **FEES.** Client project data management, security, storage, backup with redundancy and third-party supplemental monitoring, and protection from cyber malicious activity for this project shall be billed to the Client as a Project Logistics Fee. The fees assessed by the Service Provider against the Client under this paragraph shall be subject to the same payment requirements contained in paragraph 4 of this Agreement.
6. **INSTRUMENTS OF SERVICE.** Any and all drawings, calculations, and specifications developed or produced by the Service Provider as instruments of service shall be the exclusive property of the Service Provider until the Client has rendered full and complete payment for services to the Service Provider.
7. **LIMITATION OF LIABILITIES AND WARRANTIES OF THIRD-PARTIES.** The Client acknowledges and accepts that the Service Provider shall not be liable in any way for a Contractor's construction means, methods, techniques, warranties, sequence or procedures. The Client further acknowledges and accepts that the Service Provider shall not be held liable for any conduct, act, and/or omission of a Contractor or third-party in connection with this Agreement, including but not limited to any safety precautions, programs, or integrity of said Contractor or third-party.
8. **LIMITED WARRANTY AND LIMITATION OF LIABILITY OF SERVICE PROVIDER.** The Service Provider expressly disclaims any and all warranties, whether express or implied, as to its findings, design, recommendations, plans, drawings, calculations, specification, or professional advice other than that the aforementioned has been prepared in accordance with Professional Standard of Care. The Client understands and agrees that it shall not be permitted to hold the Service Provider liable for any error or omission in its project scope and design services beyond the Service Providers current insurance policy coverage. **IN NO EVENT**, except where it is judicially determined that Service Provider performed its Services with recklessness or willful misconduct, **SHALL THE SERVICE PROVIDER OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE CLIENT OR ANY THIRD PARTY FOR**

CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

9. **NON-SOLICITATION OF EMPLOYEES.** In order to avoid disruption of business, to prevent unfair competition, and to protect the parties' legitimate interests, each party acknowledges and agrees not to solicit, directly or indirectly, or to hire each other's employees, for the same or substantially the same job, during and for a reasonable period (one year) following completion of the services under this agreement, except as expressly permitted herein. For purposes of this section, "**employee**" means any current or former employee, contractor, consultant or other service provider of one party who has provided services to or otherwise interacted with the other party within the past 12 months in connection with the business dealings of the parties collectively, such as pursuant to this Agreement. Additionally for purposes of this section, "**solicit**" means to actively recruit, encourage, or otherwise seek to induce an employee to terminate their employment or contractual relationship with their current employer to be employed by the other party. The term "**solicit**", however, shall not be understood to include generalized searches by one party for employees through advertisements, employment firms, or otherwise not targeted at the other party's employees. During the term of this agreement or the term of each party's employees' employment, whichever is sooner, and for a period of one (1) year thereafter, neither party shall solicit the other party's employees except with the express written consent of the current employer. In the event of a violation of this section by either party, the parties acknowledge and agree that the damages to the other party would be difficult or impracticable to determine, if the party violating the this section receives notice of a breach from the other party and failures to cure it promptly, then the violating party will pay to the other party as liquidated damages and not as a penalty an amount equal to the amount of Seventy-Five Thousand Dollars (\$75,000.00). In addition to the aforesaid terms of this section, any solicitation or attempted solicitation for employment directed to a party's employees by another party will be deemed a material breach of this Agreement, in which event the affected party shall have the right, but not the obligation, to terminate this Agreement immediately.
10. **TERMINATION OF AGREEMENT.** Once the Client provides an acceptance to the Service Provider's Proposal in writing, the Client shall be liable for all costs incurred by the Service Provider due to any subsequent cancellation or delay in the performance by the Client, regardless of whether performance has been rendered. This Agreement may be terminated by either party by providing ten (10) days written notice should the other party fail to substantially perform in accordance with this Agreement. Upon termination by either party, the Service Provider shall be entitled to full compensation for any services rendered prior to the termination date, including reimbursable expenses and termination expenses.
11. **GENERAL TERMS. GOVERNING LAW & VENUE.** The Parties understand and agree that this Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of Illinois without giving effect to any conflict of laws provisions thereof. The Parties agree that in the event of litigation arising from the Agreement, the exclusive venue for the adjudication of such disputes shall be the Circuit Court of the Sixteenth Judicial Circuit, Kane County. **ENTIRE AGREEMENT.** Further, this Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. **SEVERABILITY.** The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. **WAIVER.** No waiver of any right, remedy, power, or privilege under this Agreement ("Right(s)") is effective unless contained in a writing signed by the Party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right. The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. **FURTHER ASSURANCES.** Each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and each of the other Transaction Documents and give effect to the transactions contemplated hereby. **ASSIGNMENT.** Neither Party may directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not such Party is the surviving entity), operation of law, or any other manner, without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. **SUCCESSORS.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. Except for the Parties, their successors and permitted assigns, there are no third-party beneficiaries under this Agreement.
12. The Parties represent and warrant to each other that each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Agreement and the undertakings contemplated herein.
13. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
14. Illinois Freedom of Information Act. Service Provider acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all reasonable written requests made by the Client for public records (as that term is defined by Section 2(c) of FOIA in the undersigned's possession and to provide the requested public records to the Client within three (3) business days of the request being made by the Client. The undersigned agrees to indemnify and hold harmless the Client from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Client under this agreement.
15. Service Provider shall to the extent of the law and its insurance policy coverages, indemnify, defend, and hold harmless the Client, its elected officials, officers, and employees from and against legitimate claims, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees arising from or out of Service Provider's performance of its obligations under this Agreement, including specifically those brought by affected third parties.