



CITY OF WASHINGTON, ILLINOIS

City Council Agenda Communication

Meeting Date: November 1, 2021

Prepared By: Dennis Carr, P.E. – City Engineer

Agenda Item: Phase 2B Alternate Evaluations Engineering Agreement

Background: At the last Committee of the Whole meeting, the initial cost and scope for the Hamilton Consulting Engineers, Inc. alternate analysis was presented to Council. With no direction from Council given to reduce the scope of the work, staff worked with Hamilton Consulting Engineers, Inc. to produce an engineering agreement to perform the work as was previously scoped.

Explanation: The engineering services agreement for Hamilton Consulting Engineers, Inc. is for a not-to-exceed amount of \$165,000. The work is slated to be completed on or before March 15, 2022. The additional time is to allow for a thorough analysis to be completed.

Fiscal Impact: The Sewer fund is a proprietary fund. Therefore, the \$165,000 will need to come from Fund 501.

The Hilldale project came in under budget, as will the Lawndale Private and Holland Private projects. Until receipt of the final pay request for the latter two projects, it is unknown if there will be enough remaining in Fund 501 System and System Engineering accounts to fund this engineering agreement. The remaining fee would need to be paid from our surplus Sewer funds.

**AGREEMENT BETWEEN
CITY OF WASHINGTON, ILLINOIS
and
HAMILTON CONSULTING ENGINEERS, INC.
for
PROFESSIONAL SERVICES**

PART 1. PARTIES AND PROJECT:

THIS AGREEMENT is made on November 4 in the year 2021 between the City of Washington, Illinois, hereinafter called the Owner, and HAMILTON CONSULTING ENGINEERS, INC., of JOLIET, ILLINOIS hereinafter called the Engineer, for the following project:

3rd Party Alternative Alignment Analysis for the Farm Creek Trunk Sewer

1.1. Scope: The scope of the Project entails performing a highly transparent 3rd party alternative analysis for the Farm Creek Trunkline Sanitary Sewer in Washington, Illinois, providing assistance in analyzing five alternative alignments and giving a recommendation presentation to the City Council.

1.2. Schedule: The Engineer shall provide the Services called for by the Agreement beginning not earlier than the date of the execution issued by the Owner. All Work shall be fully completed no later than March 15, 2022, unless sooner, terminated or extended as provided herein.

PART 2. ENGINEERING SERVICES:

In accordance with the terms and conditions of the agreement, the Engineer shall provide PROFESSIONAL ENGINEERING SERVICES, hereinafter referred to as Services, for the Owner, as summarized in **Exhibit B**.

Services not set forth above are specifically excluded from the scope of the Engineer's services. The Engineer assumes no responsibility to perform any services not specifically listed above.

2.1. Specific Exclusions

No geotechnical engineering; surveying; cultural, endangered species, and archaeological consultation or delineation; Phase 1 environmental; wetlands delineation; or floodplain/floodway modeling.

2.2. Additional Services:

If authorized in writing by the Owner, the Engineer agrees to furnish or obtain from others, additional professional services in connection with the Project, as set forth below and contained within this agreement.

2.2.1. Services due to changes in the scope of Project or its design, including but not limited to, changes in size, complexity, schedule or character of construction.

2.2.2. Revising studies, reports, design documents, drawings or specifications which have previously been approved by the Owner, or when such revisions are due to causes beyond the control of the Engineer.

2.2.3. Preparation of design documents for alternate bids or for out-of-sequence work requested by the Owner.

2.2.4. Preparation of detailed renderings or exhibits or scale models for the Project when requested by the Owner.

2.2.5. Providing services as an expert witness for the Owner in connection with litigation or other proceedings involving the Project.

2.2.6. Providing other services not otherwise provided for in this Agreement, including services normally furnished by the Owner as described in Part 4, Owner's Responsibilities.

PART 3. ENGINEER'S COMPENSATION:

3.1. Basic Services: For all services and phases as stated in Part 2 of this agreement the Engineer shall be compensated on a Time and Expense basis, based on the hourly rates and direct costs in Exhibit A with a not-to-exceed estimate of One-Hundred-Sixty-Five Thousand and 00/100 dollars (\$165,000.00). Upon reaching the limit, HCE will stop performing services unless Owner authorizes further work in writing.

3.2. The Owner will be invoiced on a monthly basis. Invoices will be made monthly for equipment, supplies or services received and accepted in accordance with the terms of this Agreement and shall be considered past due if not paid within thirty (30) calendar days of the due date. Invoices and payments will be addressed as follows:

Invoices to: City of Washington
301 Walnut Street
Washington, IL 61571

Payments to: Hamilton Consulting Engineers, Inc.
3230 Executive Drive
Joliet, IL 60431
Attn : Accounts Receivable

3.3. Travel will be at the Owners expense, provided that such travel is pre-approved in writing by Owner. Travel required during the performance of this Agreement shall be subject to the terms and conditions and applicable rates as set forth in the Federal Travel Regulations and invoiced as additional cost.

3.4. Owner recognizes that timely payment is a material part of this Agreement. Each invoice is due and payable within thirty (30) calendar days of the date of the invoice. Owner will pay when due that portion of invoice, if any, not in dispute. If payment in full is not received by the Engineer within thirty (30) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. If Owner fails to pay any undisputed invoiced amounts within sixty (60) calendar days of the date of the invoice, this shall constitute a material breach of this Agreement, and Engineer may suspend its performance or terminate this Agreement without incurring any liability to Owner and without waiving any other claim against Owner. The Engineer shall have no liability whatsoever to the Owner for any costs or damages as a result of such suspension or termination caused by any breach of this Agreement by the Owner. Upon payment in full by the Owner, the Engineer may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Engineer to resume performance.

3.5. If the Engineer incurs any costs in order to collect overdue sums from the Owner, the Owner agrees that all such collection costs incurred shall immediately become due and payable to the Engineer. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Engineer staff costs at standard billing rates for the Engineer's time spent in efforts to collect. This obligation of the Owner to pay the Engineer's collection costs shall survive the term of this Agreement or any earlier termination by either party.

3.6. Payment of invoices shall not be subject to any discounts or set-offs by the Owner, unless agreed to in writing by the Engineer. Payment to the Engineer for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

3.7. If required, Additional Services as described in Part 2.2 of the Agreement shall be compensated for based upon the actual cost of these services including the Engineers time and materials for directing and/or performing such services as time and expense per the rate sheet attached as Exhibit A. The parties shall agree in advance and in writing on the specific cost for, or a range of costs for, any Additional Services.

3.8. Construction cost when used as a basis for determining the compensation to the Engineer shall be determined as follows with precedence in the following order:

- 1) The awarded bid cost of the project.
- 2) For work for which a construction contract is not awarded but for which bids were received, the

lowest bonafide bid received from a qualified bidder.

- 3) For work for which bids are not received, the Engineer's latest opinion of the construction cost.

3.8.1. No deduction shall be made from the Engineer's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractor.

3.8.2. Labor furnished by the Owner for the Project construction shall be included in the construction cost at current market rates including a reasonable allowance for overhead and profit. Material and equipment furnished by the Owner for the project shall be included in the construction cost at current market prices, F.O.B. project site, except that used material and equipment shall be included as if purchased new for the project.

PART 4. OWNERS RESPONSIBILITIES:

The Owner shall:

4.1. Provide to the Engineer all criteria, design, and construction standards and full information reasonably requested by the Engineer as to the Owner's requirements for the Project.

4.2. Designate in writing a person authorized to act as the Owner's representative. The Owner or his representative shall receive and examine documents submitted by the Engineer, interpret and define the Owner's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the Engineer's services.

4.3. Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over the Project.

4.4. Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the construction contract documents, and such auditing services as the Owner may require to account for expenditures of sums paid to the Contractor.

4.5. Furnish the above services at the Owner's expense and in such manner that the Engineer may rely upon them in the performance of his services under this Agreement.

4.6. Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.

4.7. Guarantee full and free access for the Engineer to enter upon all property owned by the Owner required for the performance of the Engineer's services under this Agreement, provided that the Engineer provides at least 24 hours advance written notice before any such access.

4.8. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the Engineer's performance of services under this Agreement.

4.9. Definition of "Hazardous Materials": As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

4.10. Hazardous Materials – Suspension of Services: Both parties acknowledge that the Engineer's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Engineer or any other party encounters any hazardous or toxic materials, or should it become known to the Engineer that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Engineer's services, the Engineer may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Owner retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

4.11. Hazardous Materials Indemnity: The Owner agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers,

partners, employees and consultants (collectively, Engineer) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Engineer.

4.12. Waiver of Claims For Hazardous Materials: In consideration of the substantial risks to the Engineer in rendering its services in connection with the Project due to the presence or suspected presence of hazardous materials at or near the jobsite, the Owner agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause or causes of action of any kind, including but not limited to negligence, breach of contract or warranty, either express or implied, strict liability or any other causes, against the Engineer, its officers, directors, partners, employees or subconsultants (collectively, Engineer), which may arise out of or may in any way be connected to the presence of such hazardous materials. The Owner acknowledges that the Engineer is not and shall not be required to be in any way an "arranger," "generator," "operator" or "transporter" of hazardous materials present at or near the Project site, as these terms are defined in applicable federal or state statutes.

4.13. Sample Ownership: All samples and cuttings of materials potentially containing hazardous contaminants are the property and responsibility of Owner. Removal of materials from the project site will remain the obligation of Owner. Absent direction from Owner, Engineer may return all contaminated samples and laboratory byproducts to the Owner for proper disposal or treatment.

PART 5. GENERAL PROVISIONS:

5.1. Ownership of Documents: All drawings, specifications and other work product of the Engineer for this Project (the "Work Product") are instruments of service for this Project only and shall remain the property of the Engineer whether the Project is completed or not. Subject to the terms and conditions of this Agreement, the Engineer grants to the Owner a royalty-free, non-exclusive, unrestricted, irrevocable right and license to use, modify, and disclose the Work Product; provided that reuse of any of the Work Product by the Owner on extensions of this Project or on any other project without the written permission of the Engineer shall be at the Owner's risk and, to the extent permitted by law, the Owner agrees to defend, indemnify and hold harmless the Engineer from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse of the Work Product by the Owner or by others acting through the Owner.

5.2. CADD and Electronic Files: The Owner acknowledges the Engineers drawings and specifications, including all documents on electronic media (the "Instruments"), as instruments of the Engineers professional service. Nevertheless, the drawings and specifications prepared under this Agreement shall remain the property of the Engineer upon completion of the services and payment in full of all monies due to the Engineer. Subject to the terms and conditions of this Agreement, the Engineer grants to the Owner a royalty-free, non-exclusive, unrestricted, irrevocable right and license to use, modify, and disclose the Instruments; provided that reuse or making or permitting to be made any modification to the Instruments without the prior written authorization of the Engineer shall be at the Owner's risk and, to the extent permitted by law, the Owner agrees to defend, indemnify and hold harmless the Engineer from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse of the Instruments by the Owner or by others acting through the Owner. The Owner agrees to waive any claim against the Engineer arising from any unauthorized transfer, reuse or modification of the drawings and specifications.

5.2.1. The Owner and the Engineer agree that any electronic files furnished by either party shall conform to the specifications listed in Part 2 of the Agreement. Any changes to these specifications by either the Owner or the Engineer are subject to review and acceptance by the other party. Additional efforts by the Engineer made necessary by a change to the electronic file specifications shall be compensated for as Additional Services.

5.2.2. Electronic files furnished by either party shall be subject to an acceptance period of thirty (30) 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.

5.2.3. The Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed or sealed hard-copy construction documents prepared by the Engineer and electronic files, the signed or sealed hard-copy construction documents shall govern.

5.2.4. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Engineer or from any transfer or reuse of the electronic files without the prior written consent of the Engineer.

5.2.5. Under no circumstances shall delivery of the electronic files for use by the Owner be deemed a sale by the Engineer, and the Engineer makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Engineer be liable for any loss of profit or any consequential damages as a result of the Owner's use or reuse of the electronic files.

5.3. Delegation of Duties: Neither Party to this Agreement shall transfer, assign or hypothecate its interest in this Agreement without the written consent of the other; which consent shall not be unreasonably withheld. Any attempted transfer, assignment, or hypothecation without such written consent shall be void and confer no rights upon any third person and shall constitute a default hereunder.

5.4. Suspension of Services: Engineer will, upon written notice from Owner, suspend, delay, or interrupt all or a part of the performance of services to the extent directed. In such event, Engineer will resume work upon the suspended activities only upon written notice from Owner. Where appropriate, an extension of the Contract Time and/or Contract Price will be established as specified in Part 5.18.

5.5. Termination: Either party may terminate the Services with or without cause upon 10 days advance written notice. Irrespective of which party shall effect termination, the Owner shall within 30 calendar days of termination pay the Engineer for services rendered and costs incurred up to the time of termination, as well as those reasonable costs associated with the termination itself, including the costs incurred in the settlement of terminated contracts with subcontractors, suppliers and others, all in accordance with the Engineer's then-prevailing fee schedule and expense reimbursement policy.

5.6. Governing Law: In the performance of the Services provided by this Agreement, the Engineer and the Owner shall strive to comply with all applicable Federal, State and local laws, rules, and regulations. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Illinois.

5.7. Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Engineer to the Owner shall not exceed \$100,000, or twice the Engineer's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

5.8. General: Should litigation occur between the parties relating to the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party its costs of the proceedings including attorney fees, all litigation or arbitration expenses, collection expenses, witness fees, and court costs.

5.9. Delays: The Engineer shall not be liable for delays or failure to perform its services caused directly or indirectly by circumstances beyond Engineer's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of Owner or third parties, site inaccessibility or inability of others to obtain material, labor, equipment, or transportation. Should any of the above occur, then the date for Completion or any other milestone date shall be adjusted for such delay in accordance with Part 5.18, provided the Engineer reports the delay to the Owner within a reasonable time of its' discovery.

5.9.1. If the Project is delayed or if the Engineer's services for the Project are delayed or suspended for more than three months for reasons beyond the control of the Engineer, the Engineer may, after giving ten days written notice to the Owner, terminate this Agreement and the Owner shall compensate the Engineer in accordance with the termination provision contained hereafter in this Agreement.

5.10. Jobsite Safety: Neither the professional activities of the Engineer, nor the presence of the Engineer or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract

documents and any health or safety precautions required by any regulatory agencies. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Owner's contract with the General Contractor. The Owner also agrees that the Owner, the Engineer and the Engineer's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

5.11. ADA Compliance: The Americans with Disabilities Act (ADA) provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. The Owner acknowledges that the requirement of the ADA will be subject to various and possibly contradictory interpretations. The Engineer, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Engineer, however, cannot and does not warrant or guarantee that the Owner's Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

5.12. Construction Observation: When Construction Observation tasks are part of the services to be performed, the Engineer shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Owner and the Engineer, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Engineer, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

5.12.1. Based on this general observation, the Engineer shall keep the Owner informed about the progress of the Work and shall endeavor to guard the Owner against deficiencies in the Work. If the Owner desires more extensive project observation or fulltime project representation, the Owner shall request that such services be provided by the Engineer as Additional Services in accordance with the terms of this Agreement.

5.12.2. The Engineer shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

5.12.3. The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

5.13. Standard of Care: In providing services under this Agreement, the Engineer will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

5.14. Code Compliance: The Engineer shall comply with applicable laws, codes and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Engineer to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over this Project, the Engineer shall notify the Owner of the nature and impact of such conflict. The Owner agrees to cooperate and work with the Engineer in an effort to resolve this conflict.

5.15. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the Owner understands that the Engineer has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Engineer's opinions of probable construction costs are made on the basis of the Engineer's professional judgment and experience. The Engineer makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Engineer's opinion of probable construction cost.

5.16. Shop Drawing Review: The Engineer shall review and approve or take other appropriate action on the

Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The Engineer's review shall be conducted with reasonable promptness while allowing sufficient time in the Engineer's judgment to permit adequate review. Review of a specific item shall not indicate that the Engineer has reviewed the entire assembly of which the item is a component. The Engineer shall not be responsible for any deviations from the Construction Documents not brought to the attention of the Engineer in writing by the Contractor. The Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

5.17. Proprietary Information: The Engineer shall not directly or indirectly or through its employees disclose to any third person or use for the benefit of anyone other than the Owner, either during or after the term of this Agreement (or for the period of time stipulated in the applicable data), any secret or proprietary information provided to the Engineer by the Owner, whether relating to the Work performed hereunder or to the business and affairs of the Owner, provided such information is clearly designated secret or proprietary when conveyed to Engineer. Such information shall include, without limitation, Owner manuals, forms or procedures. Disclosure shall not be made without the prior written consent of the Owner unless disclosure is required by law, in which case notification of the request for such information shall be provided to the Owner prior to release. Information identified in writing by the Engineer as confidential and/or proprietary shall be similarly treated by the Owner.

Change Order Content: Changes in the Work may be accomplished without invalidating this Agreement by Change Order subject only to the limitations of this part and the requirement that the change be within the general scope of work of this Agreement. A Change Order is an amendment to this Agreement modifying the Services and specifying any or all of the following: (i) a change in the Services; (ii) an adjustment in the Contract Time; and (iii) the amount of the adjustment in the Contract Price.

5.19. Changed Conditions: The Engineer has relied on the Owner's judgment in establishing the scope of work. In the event of changed conditions, Owner agrees to negotiate appropriate Change Orders to equitably adjust the price and/or schedule accordingly. Reduction of the Services by Change Order shall not be the basis of a claim based on loss of anticipated profits from Services not accomplished.

5.20. Issuance of Change Orders: Engineer will treat as a Change Order any written or oral order (including directions, instructions, interpretations, or determinations) from Owner which request changes in the Services. Engineer will give Owner written notice within a reasonable time of the receipt of any Change Order of any resulting adjustment in the schedule and price. Unless Owner objects in writing within 5 days, the proposed terms of the Change Order with the adjustment in the schedule and price shall become a part of this Agreement.

5.21. Failure to Agree: If the Owner and the Engineer cannot agree upon an equitable adjustment in the Contract Time and or Contract Price, and the Engineer will not sign the Change Order, the disagreement shall be considered a dispute subject to settlement in accordance with the disputes clause at Part 5.24.

5.22. Subcontract: The Engineer shall not further subcontract any Services to be performed under this Agreement, except as specified in the Engineer's proposal or prior written authorization from the Owner. Neither this Agreement nor any Subtier Subcontract will create any contractual relationship between any Subtier Subcontractor and Owner, nor any liability of Owner to any Subtier Subcontractor.

5.23. Third Party Liability: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Engineer. The Engineer's services under this Agreement are being performed solely for the Owner's benefit, and no other party or entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Owner and Engineer agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

5.24. Dispute Resolution: In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement, or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

5.25. Arbitration: In the event the parties to this Agreement are unable to reach a settlement of any dispute involving an amount of less than \$50,000, arising out of this Agreement or related to the services under this Agreement, in accordance with Paragraph 5.24 (Dispute Resolution), then such disputes may, with the consent of both parties, be settled by binding arbitration in accordance with the rules of the Construction Industry Arbitration Rules of the American Arbitration Association current as of the date of this Agreement then pertaining. Each party to any arbitration hereunder shall bear its own costs of the proceeding including attorney fees. The Owner and the Engineer agree that in the event of a dispute, they will not seek recourse against individual officers, employees, directors, or shareholders of the other party.

PART 6. SPECIAL PROVISIONS:

6.1. Indemnification: The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable. Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

6.2. Contractor Insurance And indemnity Requirements: The Owner agrees, in any construction contracts in connection with this Project, to require all contractors of any tier to carry statutory Workers Compensation, Employers Liability Insurance and appropriate limits of Commercial General Liability Insurance (CGL). The Owner further agrees to require all contractors to have their CGL policies endorsed to name the Owner, the Engineer and its subconsultants as Additional Insureds and to provide Contractual Liability coverage sufficient to insure the hold harmless and indemnity obligations assumed by the contractors. The Owner shall require all contractors to furnish to the Owner and the Engineer certificates of insurance as evidence of the required insurance prior to commencing work and upon renewal of each policy during the entire period of construction. In addition, the Owner shall require that all contractors will, to the fullest extent permitted by law, indemnify and hold harmless the Owner, the Engineer and its subconsultants from and against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the Project, including all claims by employees of the contractors.

6.3. Contractor's Insurance: Prior to the commencement of the work, the Owner shall require the Contractor and all sub-contractors to submit evidence that he (they) have obtained for the period of the construction contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage).

6.3.1. This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the construction contract, and have a limit of not less than \$500,000 for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$1,000,000 for damages arising out of bodily injury, sickness and/or death of two or more persons in any one occurrence. The property damage portion will provide for a limit of not less than \$250,000 for all damages arising out of injury to or destruction of property of others' arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures.

6.3.2. Included in such coverage will be contractual coverage sufficiently broad to insure the provision of paragraph 6.1. "Indemnification": The comprehensive general liability insurance will include as additional

named insured: the OWNER and the ENGINEER and each of their officers, agents, and employees.

6.4. Builders Risk "All Risk" Insurance: Before commencement of the work, the Owner will require that the Contractor and all Sub-contractors submit written evidence that he (they) have obtained for the period of the Construction contract, Builders Risk "All Risk" completed value insurance coverage (including earthquake and flood) upon the entire Project which is the subject of the construction contract. Such insurance shall include as additional named insured: the Owner, the Engineer, and each of their officers, agents, employees and any other persons with an insurable interest as may be designated by the Owner. Such insurance may have a deductible clause but not to exceed \$5,000 except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale.

6.5. Engineers Insurance: During the period that Services are performed under this Agreement, Engineer will maintain the following insurance: (1) Workers' Compensation coverage in accordance with the laws of the states having jurisdiction over its employees engaged in the Services and Employer's Liability Insurance (limit of \$500,000 each occurrence.); (2) Commercial General Liability Policy with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate; (3) Commercial Automobile Liability with a limit of \$500,000 per occurrence and a \$1,000,000 aggregate; and (4) Professional Liability coverage with a \$1,000,000 limit on each claim and a \$2,000,000 aggregate. Owner agrees that Engineer will not be liable for any loss, damage, or liability arising out of this Agreement beyond the coverage, and conditions of such insurance with limits as stated above.

PART 7. COVENANTS AND CERTIFICATIONS BY THE ENGINEER:

7.1. Certification: The Engineer certifies that the services of anyone that has been debarred or suspended under Federal Executive Order 12549 has not or will not be used for planning, design, nor construction services.

7.2. Entire Agreement, Modifications, Headings, Severability, Survival: The parties acknowledge that this Agreement constitutes the entire Agreement between them and supersedes all prior representations, negotiations, warranties, agreements, and understandings oral or written between the parties with respect to its subject matter. Unless stated otherwise in this Agreement, this Agreement may not be modified except in writing signed by both parties. The headings to this Agreement are for convenience and reference purposes only and shall not constitute a part of the Agreement. If any element of this Agreement is later held to violate the law or a regulation, it shall be deemed void, and all remaining provisions shall continue in force. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

Owner and Engineer confirm reading this document in full and confirm that they understand the terms of this Agreement. Owner and Engineer freely enter into this Agreement. The Agreement becomes effective on the latest date of execution indicated below.

OWNER

ENGINEER

By: _____

Title: _____

Date: _____

By:  _____

Title: Kristen R. Hamilton, Chairman/CEO

Date: November 4, 2021



Exhibit A

CLASSIFICATION	RANGE
PROJECT PRINCIPAL	205.00 – 215.00
PROJECT ENGINEER	125.00 – 210.00
PROJECT SPECIALIST	155.00 – 165.00
PROFESSIONAL LAND SURVEYOR	145.00 – 155.00
2-MAN FIELD CREW	210.00 – 265.00
1-MAN FIELD CREW	125.00 – 140.00
CAD	125.00 – 140.00
ADMINISTRATIVE SUPPORT	75.00 – 95.00
DIRECT COSTS	See Page 2

Please Note: Rates subject to change.

**DIRECT COSTS FOR 2021****PAGE 2****DIRECT COST**

Vehicle Mileage Tolls

Per Diem Lodging

Per Diem Meals

Overtime

Film & Processing

Postage

Specific Insurance (required for project) Equipment

Rental (specific for project)

Prints (24" x 36")

Copies:

8.5" x 11" B&W

11" x 17" B&W

8.5" x 11" Color

11" x 17" Color

Traffic Systems

Radio Communication or Two-way Radio Overnight

Delivery/Postage Courier Service

Monuments-Permanent

Payments for Newspaper Ads

Web Site

Facility Rental for Public Meetings & Exhibits/ Renderings/AV
equipment/transcriptions (specific to project)

Recording fees

Courthouse fees

Testing of Soil Samples

Lab Services (excluding Phase III normal construction inspection such as
beam breaks, cylinder breaks, pavement cores)Equipment rental specific for a project (snooper for bridge inspection,
noise meter, etc.)

Specialized equipment – on an as needed basis with prior approval

Telephone Usage (for traffic system monitoring)

Storm sewer cleaning and televising

Traffic control and protection

Aerial photography and mapping

Utility exploratory trenching

RATE

\$0.56/mile (max. State Rate)

Actual Cost

Up to Maximum State Rate

\$28.00/day (max. State Rate)

Premium portion

Actual Cost

Actual Cost

Actual Cost

Actual Cost

\$3.00/sheet

\$0.05/each

\$0.10/each

\$0.25/each

\$0.50/each

Actual Cost

Actual Cost

Actual Cost

Actual Cost

Actual Cost

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Actual Cost

Actual Cost

Actual Cost

Actual Cost

Actual Cost

Actual Cost

Actual Cost



EXHIBIT B – SCOPE OF WORK

ITEM TASK DESCRIPTION	COST
1 Data Collection	\$15,000
A Get and review Strand Data	
B Develop LIDAR Routes	
C Calculate I/I contribution from FCTS	
2 Interview City Staff	\$5,000
A Site meeting	
B Memo	
3 Interview homeowners	\$5,000
A Meeting	
B Walk Route	
C Memo	
3a Community Survey and Website	\$15,000
A Question development	
B Survey Development and Posting	
C Capture Results	
D Report to City	
E Website Development and Monthly Updates	
3b Existing Sewer Evaluation	\$25,000
A Bid documents for TV Inspection	
B Review videos	
C Recommendation Memo	
D Bid documents for telegrouting (or sliplining), MH Repair	
4 Draft Report	\$30,000
A Routing and Service Area Calculations	
B Report	
C Exhibits	
5 Report Revisions	\$10,000
A Report	
6 Public Hearing	\$20,000
A Exhibits	
B Stenographer	
C Hearing	
D Disposition of Comments (estimate)	
E PW meeting to discuss comments	
7 Final Draft	\$10,000
A Report	
8 Presentation to Council	\$5,000
A PowerPoint	
B Council Meeting	
9 Final Report	\$10,000
A Report	
10 Contingency, allowance	\$15,000
An Allowance for additional tasks as needed	
TOTAL PROJECT COST	\$165,000