



**Issue:** Resolution #2022-086 – Contract for Utility Locating Services

**Date:** 08.17.2022

**Submitted By:** Doug Colvin  
Assistant City Administrator – Director, Nixa Utilities and Public Works

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### Background and Analysis

As discussed last fall during budget discussions, staff seeks to end our internal utility locating services for Nixa Utilities and to contract those services to a highly qualified vendor. Passage of the attached resolution awards these services to USIC Locating Service and authorizes the City Administrator to execute a contract with them.

Driven mainly by the Natural Gas Safety Act, utility locating for excavators is required of utility companies by State of Missouri law; more specifically the *Missouri Underground Facility Safety and Damage Prevention Act, codified in §§ 319.010 to 319.050, RSMo*. More commonly known as Missouri One-Call or Dig-Rite program, utilities are required to be members of the Missouri One-Call System to both register utilities operational areas and provide for locating (marking) services for excavators to reduce or eliminate third party damage to buried/hidden facilities which in turn provides an added level of safety to public and property.

Since the law went into effect in 1976, Nixa Utilities has used an internal employee to locate its utilities. This began as an added task for one of the meter readers and grew into its own full-time position in the early 2000's. Over the past few years, the systems have grown (as has the volume of other area projects) to a point where we are averaging well over 400 locate request per month and our one full-time person regularly works overtime. Since early last year, we have even had to assist with additional personnel up to several days per week to keep up. At this level, we can't continue to effectively meet the locating requirements within the time allowed by state law without increasing personnel, equipment, and materials. We can only expect this continued overtime pace will create burnout which could lead to other problems. Additionally, our supporting personnel have other full-time duties which are being negatively affected because of their absence; three departments are already shorthanded as we are struggling to fill vacancies.

Staff solicited proposals for third party locating services and though there are at least three that operate in the state, USIC is the primary company in southwest Missouri. USIC is used locally by Spire, all of the local communications companies as well as Ozark Electric, Liberty and many others. They have been in the locating business for many years and are very good at what they do. One other locating firm did respond that it would not be cost effective for them to provide service to us while being their only customer in the area; the third company didn't respond.



Like many other private and public utility companies, we seek to contract this service out because it will be more cost effective than enlarging our internal program. Additionally, this will allow us to utilize the existing personnel in other growing areas of our operations, more specifically in infrastructure construction inspection where we also need to add a position because the workload has outgrown our ability to keep up.

The 2022 budget contains authorization for additional personnel and equipment for a second locator and a second infrastructure inspector; by contracting this service, we can use our current locator and equipment to fill the second (new) inspector position and do so at a cost savings for all three utilities and keep us compliant with state law.

#### Recommendation

Staff recommends passage of Resolution 2022-086 authorizing the City Administrator to execute a contract with USIC Locating Services, LLC.

**RESOLUTION NO. 2022-086**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH USIC LOCATING SERVICES, INC. FOR UTILITY LOCATING SERVICES.**

**WHEREAS** City staff have solicited proposals for utility locating services; and

**WHEREAS** at the conclusion of the solicitation process, City staff determined that USIC Locating Services, Inc., submitted the best proposal; and

**WHEREAS** City Council desires to authorize the execution of the Contract, attached hereto as "Resolution Exhibit A," for the purpose described therein.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:**

**SECTION 1:** The City Administrator, or designee, is hereby authorized to execute the Contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with USIC Locating Services, Inc. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A."

**SECTION 2:** The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

**SECTION 3:** This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

**ADOPTED BY THE COUNCIL THIS 22<sup>nd</sup> DAY OF August, 2022.**

ATTEST:

\_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
CITY CLERK

**APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

**RESOLUTION NO. 2022-086**

47 APPROVED AS TO FORM:

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CITY ATTORNEY

**RESOLUTION EXHIBIT A**

**PROFESSIONAL SERVICES CONTRACT**

**THIS PROFESSIONAL SERVICES CONTRACT** (“Agreement”) by and between USIC Locating Services, LLC, (“Contractor”) and the City of Nixa, a Constitutional Charter City of the State of Missouri (“City”), is made and entered into upon the date of execution of the Agreement by all parties.

**WHEREAS** City issued a Request for Proposals (RFP-051-2021/PW) for professional services related to providing certain services to the City; and

**WHEREAS** Contractor has submitted a proposal in response to said RFP; and

**WHEREAS** after due consideration, the City has accepted the proposal of the Contractor; and

**WHEREAS** City and Contractor desire to enter into this Agreement whereby the Contractor shall undertake the performance of the services contemplated herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the City and the Contractor hereby agree as follows:

- 1) Contract Documents.** This Agreement shall consist of the following documents, attachments, and exhibits:
  - a. This Executed Agreement
  - b. Facilities Locating and Marking Service Contract (Attachment B)
  - c. RFP-004-2022/PW
  - d. USIC Proposal (Exhibit A)
  - e. Schedule of Fees (Exhibit B)

The Agreement shall also include any Exhibits incorporated by reference in the above-described documents. When any provisions of the Contract Documents conflict, the provision contained in RFP-051-2021/PW shall control, followed by the Executed Agreement, then the Contractor’s Schedule of Fees.

- 2) Term.** The term of this Agreement shall be for a period of Three (3) years. The agreement may be extended for two (2) additional one-year extensions, beginning on the date of execution by both parties.

- 3) Scope of Services.** The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in Exhibit A with the standard of care, skill, and expertise ordinarily used by other members of Contractor’s profession in performing similar services.

Contractor represents and warrants that it is equipped, competent, and able to perform, and that it will perform all services hereinafter set forth in a diligent and competent manner in accordance with the professional standard of care customarily recognized by members of the Contractor’s profession.

Contractor shall provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in RFP-

051-2021/PW (the "Services").

All Services shall be performed and provided in conformance with all applicable policies of the City, and all applicable federal and state laws and regulations.

The City, upon agreement of the Contractor may add Services to the Scope of Services. Such added Services shall be evidence by a written instrument signed by both parties. The City may delete items from the Scope of Services at any time and at the sole discretion of the City.

**4) Compensation.** The City hereby agrees to pay the Contractor, as full compensation for the complete and satisfactory performance of this Agreement such amounts as are set forth in the Contractor's Schedule of Fees, said Schedule being attached hereto and incorporated by this reference as "**Exhibit B.**"

**5) Other Representations, Warranties, and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided Services such as the ones to be performed under this Agreement to other municipalities or private enterprises and that the Contractor has sufficient expertise, knowledge, information, and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer.

**6) Amendment; Waiver.** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

**7) Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of this Agreement the insurance coverage's not less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo., as said section may be amended. Insurance policies providing the required coverages shall be with companies licensed to do business in the State of Missouri. All costs of obtaining and maintaining insurance coverages shall be borne by the Contractor.

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for the term of this Agreement.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services. The certificates must list the City as an additional insured on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Nixa, 715 W. Mt. Vernon, PO Box 395, Nixa MO 65714". The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty days written notice to the City.

**8) Termination.**

**a. Termination for breach.** Failure of the Contractor to fulfill any of Contractor's obligations under this Agreement in a timely and satisfactory manner shall constitute breach of this Agreement. The City shall thereupon have the right to immediately terminate this Agreement with sufficient notice. The City shall give written notice of

the termination to the Contractor.

- b. Termination for Convenience.** Either party shall have the right at any time to give ninety (90) day written notice to terminate and cancel this Agreement, without cause, for the convenience of either party., . In such event, City shall not be liable to Contractor except for the payment for actual work performed prior to such notice.

**9) Notices.** Any notice required to be provided under this Agreement shall be sent via U.S. Mail or via e-mail. Notices shall be effective when received at the address as specified below. All such notices shall be sent to each party at the address below, or to such other address as designated by such party, in writing:

IF TO THE CITY:                   City of Nixa  
  ATTN: Jimmy Liles, City Administrator  
  PO Box 395  
  Nixa, MO 65714  
  E-mail: [jliles@nixa.com](mailto:jliles@nixa.com) with Cc to: [dcovin@nixa.com](mailto:dcovin@nixa.com)

IF TO CONTRACTOR:           USIC Locating Services, LLC  
  ATTN: Contracts  
  9045 N. River Road, Suite 200  
  Indianapolis, IN 46240  
  [contracts@usicllc.com](mailto:contracts@usicllc.com)

**10) Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

**Independent Contractor.** Contractor shall be and operate as an independent contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of the Contractor and shall not be deemed employees of the City in any respect.

**11) Compliance with Laws.** Contractor shall comply with all applicable City Ordinances and all other applicable laws and regulations, whether State or Federal, including without limitation, unemployment and workers' compensation, occupational safety, equal employment, and wage and price laws, insofar as applicable to the performance of this Agreement.

**12) Subcontracts and Assignment.** The Contractor shall not subcontract or assign any of the Services to be performed by it hereunder without the express written consent of the City. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirements imposed for such agreement by federal, state, and local law.

**13) Indemnification.** In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this Contract.

Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including

attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Contractor.

Firm shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its Contract price.

Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

**14) Nondisclosure and Confidentiality.** The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

**15) Multi-year contracts and Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement shall terminate at the end of the then current fiscal year as if terminated expressly and mutually by both parties. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

**16) Accounting.** During the term of this Agreement, the Contractor shall maintain books and accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

**17) Other Contractors.** Nothing in this Agreement shall be construed as prohibiting the City from contracting with other Contractors to provide any of the Services provided for herein.

**18) Work Records and Work Product.** The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports,



correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

**19) Compliance with Immigration Statutes.** Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

**20) Governing Law and Jurisdiction.** This Agreement and every question arising hereunder shall be construed and determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in Christian County, Missouri.

**21) Discrimination.** Contractor agrees that, in the performance of this Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Contractor and any authorized subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**22) Entire Agreement.** This Agreement, including Attachment B, the Exhibit A, and Exhibit B, shall constitute the entire Agreement between the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing and specifically referring hereto.

**23) City's Representative.** The City Administrator is hereby designated as the City's authorized representative for purposes of this Agreement. The City Administrator is charged with providing any approvals and exercising any rights of the City under this Agreement, including the approval of any renewal terms contemplated herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR:

CITY OF NIXA, MISSOURI

\_\_\_\_\_  
Signature.

\_\_\_\_\_  
Jimmy Liles, City Administrator

\_\_\_\_\_  
Chuck Adams  
Printed Name.

Approved as to form:

\_\_\_\_\_  
Chief Commercial Officer  
Title

\_\_\_\_\_  
Nick Woodman, City Attorney

\_\_\_\_\_  
Date.

CERTIFICATE OF FINANCIAL OFFICER

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

ATTEST:

\_\_\_\_\_  
Signature.

\_\_\_\_\_  
Jennifer Evans, Director of Finance

\_\_\_\_\_  
Name.

\_\_\_\_\_  
Title.

\_\_\_\_\_  
Date

# *City of Nixa, MO*



## ***Request For Rough Estimate Proposal***

***“Utility Locating & Marking Services”***

***October 22, 2021***

***Prepared By***

USIC Locating Services, LLC  
Edward Dubuc  
Business Development Manager  
608-335-8945



**USIC ROUGH ESTIMATE PRICING PROPOSAL FOR THE  
CITY OF NIXA, MO**

*Pricing – One price per ticket to cover all utilities (Water, Sanitary, Electric)*

- Per One Call Ticket \$20.00
- Project \$15.00 Per ¼ Hour
- Emergency Ticket \$40.00 Flat Fee
- Non-At Fault Damage Investigation \$275.00 Flat Fee

**NOTE:** USIC does not charge for any drive time

Above pricing will have a restoration cap of \$10,000.00 per occurrence

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**Pricing Definitions**

**Per One Call Ticket** – All tickets received from State One Call.

**Project Rate** – If locating the City of Nixa utility exceeds thirty minutes, the ticket will then be billed the proposed per ¼ hour Project Rate starting after the first thirty minutes of locating time.

**Emergency Ticket** – All Emergency Tickets received from MO811. This is a flat fee and no hourly fees will be charged.

**Non-At Fault Damage Investigation** – USIC will respond and investigate all damages to the City of Nixa utility. Should the final findings by both parties prove that USIC is clearly not the party causing the damage, USIC will be compensated \$275.00 for the time to perform the Damage Investigation and provide report to City of Nixa.

**PLEASE NOTE:** This fee is typically a roll through fee that City of Nixa can charge back to the damaging party.

**Restoration Cap** – In the event a damage was to occur where USIC is at fault, USIC will pay up to \$10,000.00 per incident to repair the damaged utility.

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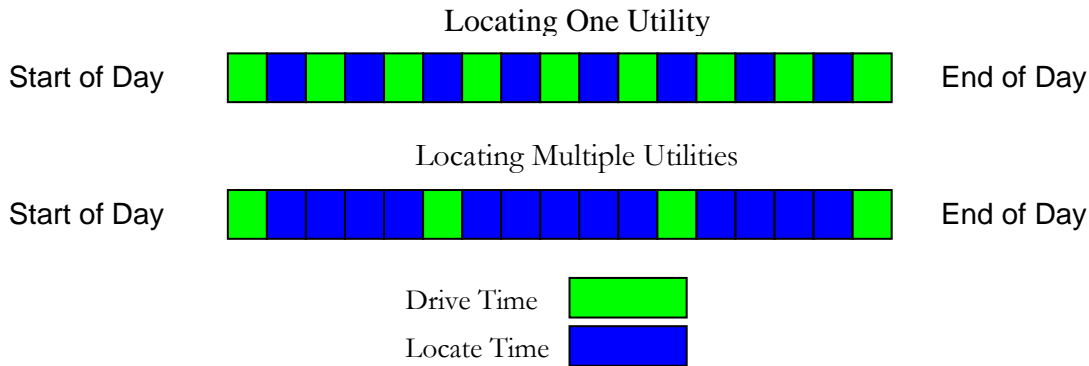
*In addition to saving money on locating expense, City of Nixa will experience the added value of using our Professional Damage Prevention Services.*

**OUR VALUE PROPOSITION INCLUDES:**

- Basic Economic Value Summary
- Risk Management Summary
- Advanced Technology Summary
- Professional Services Summary

**BASIC ECONOMIC VALUE**

- USIC currently visits every job site already for other utility clients creating *economies of scale that cannot be matched* internally or by any other vendor.



**RISK MANAGEMENT**

- USIC *investigates every damage occurrence. Reports Upon Request*
- USIC uses a CDI (Certified Damage Investigator) to investigate and prepare reports.
- Each report includes pre and post dig photos and all pertinent documentation. All reports are prepared electronically and uploaded through wireless technology.
- All damage reports made available for use in claims recovery efforts
  - Damage reports enables you to recover all damage expense from either the locate vendor or from the excavator.

**ADVANCED TECHNOLOGY**

- USIC utilizes an in-house proprietary ‘real time’ ticket management system (TicketPro) that reflects 30 plus years of locating experience. The depth of TicketPro cannot be matched by any ‘off the shelf’ ticket management system.
- USIC technicians work their ticket load in a real time, paperless environment (creating even more labor related efficiencies).
- **City of Nixa will have direct, real time access** to our ticket management system (*Customer Portal*). City of Nixa will have ability to:

- View tickets as they come in from the State One Call service “Real-Time”
- Quickly identify when ticket is due and if completed, time it was completed and what was located.
- Query any ticket by ticket number
- View all post locate photos attributed to that located
- Additional information package available upon request.

### **PROFESSIONAL SERVICES**

- City of Nixa increases labor support.
- City of Nixa increases labor management in terms of Supervisors, District Managers, Senior Directors and VP of Operations.
- Technician support also includes a Claims Manager, a Quality Manager, a HR Specialist and a Key Accounts Manager
- Accurate and timely locates to include pre-dig photographs to assist in damage recovery.
- USIC uses the latest technology and works ‘real time’ in a paperless environment to ensure data integrity.
- USIC encourages regular performance meetings with City of Nixa
- USIC is engaged nationally in the prominent industry association and legislation (to include the Common Ground Alliance (CGA) and National Utility Locating Contractors Association (NULCA). We also track and invest in the latest locating technology.
- USIC provides all labor and materials to include all after hours emergencies, weekends and holidays. We manage the work, you manage us.
- USIC provides City of Nixa all data and tools necessary to professionally manage their damage prevention program.

## **City of Nixa, MO**

*In partnership with*

## **USIC Locating Services, LLC**

**Attachment B**

**FACILITIES LOCATING AND MARKING  
SERVICE CONTRACT**

THIS Exhibit A is incorporated with Attachment A Professional Services Contract by and between USIC Locating Services, LLC, (“Contractor”) and the City of Nixa, a Constitutional Charter City of the State of Missouri (“City”), is made and entered into upon the date of execution of the Agreement by all parties.

BACKGROUND

- A. Customer owns and operates Facilities in the geographic area described on Exhibit A to this Contract (**Excavation Notification Area**).
- B. Customer desires to have USIC provide the necessary labor and equipment to provide certain services relative to locating and marking Customer’s Facilities in the Contract Service Area.

CONTRACT

Based on the Background set forth above and in consideration of the mutual covenants, terms and conditions set forth below, USIC and Customer agree as follows:

- 1. **Definitions.** In addition to the terms defined above the following capitalized terms when used in this Contract shall have the following meanings:
  - 1.1 **Advance Locate Service** means conductive, inductive, and map-based measurement locating methods which may include hand digging and/or vacuum excavation to accurately complete a Locate.
  - 1.2 **Annual Contract Value** means the aggregate of the last twelve months’ Contract revenue.
  - 1.3 **APWA** means the American Public Works Association and its Underground Utility Location and Coordination Council.

- 1.4 **Atypical Condition (AC)** means any unusual condition, exigency, or occurrence at a given worksite that requires USIC's use of extra resources (including but not limited to manhole or vault entry, Unlocatable Facilities, labor, time, and equipment) outside of those routinely expended by USIC to accurately and safely complete a Locate.
- 1.5 **Contract Year** means the 365 (366 if period includes February during a leap year) days beginning with the date this Contract begins and the anniversary date each year after.
- 1.6 **Custom Reporting** means any reporting request from customer to USIC that cannot be accomplished by customer via USIC customer portal.
- 1.7 **Customer's Facilities** means any Facilities owned or operated by Customer.
- 1.8 **Damage Investigation Fee** means the fee charged to Customer for any damage investigation performed by USIC (to include Site photographs, measurements and/or other applicable forensic data) from which it is determined USIC is not at fault.
- 1.9 **Damage to Customer's Facilities** means the penetration or destruction of any protective coating, sheath, housing or other protective facility of underground plant, the partial or complete severance of underground plant, or the rendering of any underground plant partially or completely inoperable.
- 1.10 **Emergency Normal Hours Locate** means a request for a Locate that arises from a condition that threatens life, health or property as defined by applicable state law and are transmitted during USIC's normal, non-holiday business hours Monday through Friday (7:00 am – 5:00 pm).
- 1.11 **Emergency After Hours Locate** means a request for a Locate that arises from a condition that threatens life, health or property as defined by applicable state law and is transmitted on weekends or on weekdays outside of the USIC's normal business hours (7:00 am – 5:00 pm).



- 1.12 **Emergency Holiday Locate** means a request for a Locate that arises from a condition that threatens life, health or property as defined by applicable state law and/or is transmitted on any Federally observed holiday (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Days, Thanksgiving Day, Christmas Day) or any state One-Call holiday.
- 1.13 **Environmental Handling Fee** means a fee imposed to cover USIC's cost and labor associated with proper use, disposal, and storage or recycling of any hazardous or harmful material to the environment.
- 1.14 **Excavator** means any person or entity which engages directly in excavation.
- 1.15 **Facilities** means any item used in connection with the storage or conveyance of water, sewage, electronic telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substance including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors, either above or below ground.
- 1.16 **Gridding (also known as "Excavation Notification Area")** means the geographic boundary area identified by Customer and provided to the applicable state One-Call center which is used to determine whether a request for Locate will generate a ticket for Customer after receipt of an Excavator's notification of intent to excavate (i.e., receipt of a locate ticket).
- 1.17 **Hazardous Materials** means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

- 1.18 **High Profile Facilities** means non-residential fiber cables, telecom cables 1200 pair or greater, electrical switchgears, 1000MCM(Mill) cable, 6" or greater gas mains, and 10" or greater water mains.
- 1.19 **Interruption of Service** means an interruption in the services provided by Customer to its customers arising from a Damage to Customer's Facilities.
- 1.20 **Locatable Facilities** means Customer's Facilities that can be located with Reasonable Accuracy by using devices designed to respond to the presence of Customer's Facilities, together with records and facility prints, drawings, and maps of sufficient accuracy, but shall specifically not include Unidentifiable Facilities and Unlocatable Facilities.
- 1.21 **Locate** means the process of providing Locate Services in response to an Excavator's notice of intent to excavate in accordance with this Contract.
- 1.22 **Locate Service** means using Standard Locate Services or Advance Locate Services to determine: 1) the presence or absence of Customer's Facilities; 2) whether Customer's Facilities conflict with proposed excavations; and 3) where appropriate, the Marking of the proper path or routes of Customer's Facilities with Reasonable Accuracy.
- 1.23 **Locator At Fault Damage** means Damage to Customer's Facilities caused by an Excavator that occurs as a direct result of USIC not performing the Locate with Reasonable Accuracy. Locator At Fault Damage does not include alleged Damage to Customer's Facilities arising from USIC's late or untimely Locates that were performed with Reasonable Accuracy prior to the damage occurring.
- 1.24 **Locator Not At Fault Damage** means Damage to Customer's Facilities caused by an Excavator or other third party that occurs for any other reason other than USIC not performing the Locate with Reasonable Accuracy.
- 1.25 **Marking** means the use of stakes and flags, paint or other clearly identifiable materials at appropriately distanced intervals and at each divergence from a straight line in accordance with the current marking standards of the APWA.

- 1.26 **Project Locate** is a ticket type designated by the state one call center or is any Locate that involves multiple addresses or requires more than 30 minutes to Locate Facilities at the excavation Site. Project Locate time is tracked using system time thresholds and may include any ticket type (including but not limited to tickets designated as routine, normal, and/or emergency).
- 1.27 **Reasonable Accuracy** means the placement of appropriate Markings within the applicable state's tolerance zone.
- 1.28 **Repair Costs** means the reasonable and customary, actual costs incurred by Customer to repair Damage to Customer's Facilities arising from Locator At Fault Damages, but shall specifically exclude any Third Party Claims. "Repair Costs" is equal to only the actual labor, equipment, and material costs incurred by Customer to repair the Damage to Customer's Facilities as supported by actual invoice and/or receipts for work completed by each repair contractor. This shall include reasonable and customary costs incurred by Customer's in-house labor and 3<sup>rd</sup> party contractor(s), where an itemized breakdown for all parties included in the repair is submitted. "Repair Costs" specifically excludes, except where prohibited by law: the costs and expenses listed in paragraph 7.2; overhead charges; costs arising from betterment of plant (which shall include, among other things, any upgrade, improvement, reinforcement, enlargement or extension of Customer's Facilities); administrative charges including third party administrator fees; and costs arising out of collection actions, whether incurred by the Customer or collection agencies.
- 1.29 **Services** means the services to be provided by USIC under this Contract.
- 1.30 **Site** means the premises where Services are performed and Customer has ownership or exercises control.
- 1.31 **Site Visit** means to visit the Site of a request for a Locate, but there are no Locatable Facilities to be marked.

- 1.32 **Standard Locate Service** means 1) determining whether the Customer's Facilities are in conflict with proposed excavations when employing one conductive hook-up point on either side of a Locate target that is Identifiable, and 2) Marking, where appropriate, the proper path or routes of Customer's Facilities with Reasonable Accuracy.
- 1.33 **Telecommunications Vault or Manhole Entry** as stated 29 CFR 1910.269(x) is defined as an "enclosed space" or as a working space, such as a manhole, vault, tunnel, or shaft, that has limited means of egress or entry, that is designed for periodic employee entry under normal conditions, and that does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions. "Manhole vaults" are confined spaces where a person's entire body can enter as opposed to "handhole vaults" where a person can reach in only. USIC personnel are authorized to only enter telecommunications manhole vaults when a second person is onsite, but not inside the manhole vault, in a supporting safety role.
- 1.34 **Third Party Claims** means any claims for losses, fines, penalties, damages, costs, fees, or expenses made by a person not a party to this Contract arising from or related to Damages to Customer's Facilities, including but not limited to, claims as a result of (a) injury to or death of any person, (b) damage to or loss or destruction of any property, or (c) losses identified in Section 7.2.
- 1.35 **Ticket** means the document generated at and transmitted by the One-Call center to USIC containing each request for Locate.
- 1.36 **Unidentifiable Facilities** means Customer's Facilities that are neither apparent on the records, facility prints, drawings, or maps provided by Customer or from a Visual Examination.
- 1.37 **Unlocatable Facilities, including untonable facilities**, means Customer's Facilities whose presence is known either from records provided by Customer or a Visual Examination, but which cannot be Marked with Reasonable Accuracy using Standard Locate Service procedures employed by USIC.

- 1.38 **Visual Examination** means an attempt to determine the existence of Customer's Facilities at an excavation site by a reasonable visual inspection of the dig site rather than from Customer's maps and records.
- 1.39 **Watch and Protect** means to oversee Customer's Facilities during unusual or extensive excavation projects (i.e. road widening projects, sewer projects, etc.) and providing appropriate Locate Services as may be dictated by the nature and scope of the excavations. Service requires preauthorization or prior agreement by the parties regarding criteria to be applied.
- 1.40 **White-Lining** means the Excavator designates the route and/or area to be excavated using white premarking either onsite or electronically (when available through the One-Call center), prior to or during the request for the Locate. The route of the excavation is marked with white paint, flags, stakes, lines, polygons, or a combination of these to outline the dig site prior to or during notification to the One-Call center and before the locator arrives on the job.

2. Responsibilities of USIC

- 2.1 USIC shall furnish all labor, materials, and equipment necessary to perform Locate Services for Customer within the Contract Service Area, except for the maps and records to be provided by Customer under Section 3.3. All Ticket transmittals to USIC shall come directly from the One-Call center for the Contract Service Area.
- 2.2 Upon receipt of a request for a Locate, USIC will assess whether a field visit to the excavation site and a Visual Examination is required to determine if a conflict exists between the Customer's Facilities and the proposed excavation. If USIC determines that no field visit or Visual Examination is necessary, USIC will proceed under section 2.4 below.
- 2.3 If USIC determines that there are underground Locatable Facilities present at the excavation site, USIC will indicate the presence of those Facilities with appropriate Markings.

- 2.4 If USIC determines that Customer's Facilities are not present at the excavation site, USIC will either notify Excavator prior to the proposed excavation that Customer's Facilities are not present or mark the excavation site in a manner to indicate that Customer's Facilities are not present at the proposed excavation site.
- 2.5 Customer agrees that USIC will have the right to screen tickets via prints and other technology which eliminates the requirement for an in person visit to the Site. Customer also agrees that, notwithstanding anything to the contrary contained in this Contract, USIC will not be liable for any damages that occur because of incorrect prints.
- 2.6 If USIC determines that there are Unlocatable Facilities at the excavation site, it will notify Customer and Customer will be responsible for determining what course of action should be followed to assure that the Unlocatable Facilities are not damaged by Excavator. USIC will not be liable for any damages associated with an Unlocatable Facility.
- 2.7 Any maps and records furnished by Customer pursuant to section 3.3 shall remain the property of Customer. USIC agrees to return all copies of such maps and records to Customer upon Customer's written consent or at the termination of this Contract. This obligation of confidentiality shall survive the termination of this Contract. All customers maps and records shall be kept confidential by USIC unless 1) such maps and records were previously known to USIC free of any obligation to keep them confidential; 2) such maps and records are given to USIC by a third party not obligated to keep them confidential; 3) such maps and records become public without any act or omission of USIC; or 4) otherwise, as required by law.
- 2.8 Subject to the terms of section 3.2, USIC shall perform the Services as an independent contractor and as such, USIC has the right to exercise control and supervision of the work and full control over the employment, direction, compensation and discharge of all persons assisting it in performing the Services. Further, USIC agrees that it will be solely responsible for the payment of its employees and for the payment of all federal, state, county and municipal taxes and contributions pertaining thereto.

- 2.9 USIC shall comply with the provisions of all applicable permits and licenses relative to the Services to be performed hereunder.

3. Responsibilities of Customer

- 3.1 Customer agrees not to suppress or screen any tickets in the Excavation Notification Area that would otherwise come to USIC from the state One-Call center. All Customer tickets shall be transmitted directly to USIC from the state One-Call center.
- 3.2 Customer shall not change existing Gridding such that the volume of tickets received by USIC is reduced with the applicable state One-Call center on or after the Contract Effective Date except as provided in Section 5.4.
- 3.3 Customer agrees to provide USIC with the maps and prints in a GIS format (.shp, .mdb, or .gdb) and One-Call ticket information (One-Call format for the applicable state) via e-mail or web services to USIC's Ticket Management System, so as to permit USIC to provide the Locate Services. Customer acknowledges that it is Customer's responsibility to keep all applicable maps, records, and prints up to date and provide them to USIC in a timely manner via Secure File Transfer Protocol (SFTP.) USIC bears no liability for Customer's failure to provide accurate maps, records, and/or prints, or any damage which arises from inaccurate maps, records, and/or prints.
- 3.4 Customer agrees that it will reasonably cooperate with USIC regarding receipt and resolution of Third Party Claims, which cooperation shall include but not be limited to reasonable information sharing.
- 3.5 Customer will pay USIC for the Locate Services in accordance with the charges set forth on Exhibit A. USIC shall bill for all tickets received from the State One-Call center, on behalf of Customer. USIC will not be responsible for the accuracy, updates to or the completeness of the definition of the Contract Service Area that Customer has provided to the State One-Call center.

- 3.6 Customer agrees to provide USIC with all state-issued 811 codes and a comprehensive Customer Point of Contact list within twenty-four (24) hours of Contract execution.
- 3.7 Customer recognizes White-Lining as a best practice for safe excavations. Customer agrees to use its best efforts to promote proper "White-Lining" by Excavators.
- 3.8 For Locates involving subsurface electric transmission of voltages greater than 33kV: (1) Customer will provide a qualified electric worker to identify the utility locating equipment connection point(s), via Customer's transmission engineering and system expertise; (2) Customer will make the connection(s) safely without requiring entry inside the Minimum Approach Distance for such hazards; (3) Markings will be provided outside the Minimum Approach Distance. The Locate may require the Customer to make multiple connections to safely reach the full scope of the Ticket. Customer will be notified via email of any Locates with an electric transmission line on the Site and once the Marking is complete.

#### 4. Invoicing and Payment Terms

- 4.1 USIC will remit monthly invoices to Customer via Customer specified email address.
- 4.2 All amounts payable under this Contract shall be paid on a net thirty (30) days basis, following the date of invoice.
- 4.3 A 3% late payment fee will be assessed for any invoice past due.
- 4.4 If Customer fails to pay any invoice pursuant to the payment terms set out in this section, then USIC may give written notice describing such breach ("Notice of Default"). If such material breach is not curable or the Customer fails to pay USIC's invoices within ten (10) days following receipt of the Notice of Default then, at the option of USIC, this Agreement shall terminate, in addition to all the other rights and remedies available to the non-breaching party under this Agreement and at law and in equity.



4.5 If Customer fails to pay any Invoice according to the provisions of this Agreement and (a) such failure continues for a period of five Business Days after written Notice of such failure is provided to Customer or (b) USIC has reasonable grounds for insecurity regarding the performance by Customer of any obligation under this Agreement, then USIC, by delivery of written Notice to Customer, may demand Adequate Assurance by Customer. "Adequate Assurance" means, at the option of Customer, (i) the advance payment in cash by Customer to USIC for Work or (ii) delivery to USIC by Customer of a letter of credit in an amount equal to not less than the aggregate amounts owed from Customer to USIC hereunder for the prior two month period. If Customer fails to provide Adequate Assurance to USIC within 72 hours of USIC's request, USIC shall have the right to, at its sole option, (i) renegotiate payment terms under the Agreement; (ii) terminate this Agreement upon written Notice to Customer, or (iii) suspend or reduce all services under this Agreement without prior Notice to Customer, in each case, without limiting any other rights or remedies available to USIC under this Agreement or otherwise. If USIC exercises the right to terminate this Agreement or suspend or reduce any services, then Customer shall not be entitled to take, or cause to be taken, any action hereunder or otherwise against USIC for such termination, suspension, or reduction.

5. Term, Termination, Changes and Exclusive Nature of Contract

- 5.1 This Contract shall be effective as of, August, 29, 2022 and continue for a period of one (1) year, with automatic renewal for consecutive periods of one (1) year on each expiration date, unless sooner terminated pursuant to Section 5.3.
- 5.2 Customer shall use USIC as its exclusive provider of Locate Services within the Excavation Notification Area as identified in Exhibit A.
- 5.3 Either party to this Contract can terminate this Contract upon ninety days' prior written notice to the other. Upon such termination Customer shall only be liable for payment for any Services performed by USIC prior to the effective date of termination. Failure by Customer to provide proper notice

under this provision will result in a penalty equal to 60 days average billing over the prior twelve-month period.

5.4 Either party may at any time propose changes in the schedule or scope of this Contract. USIC is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in the scope and schedule, and the resulting changes in price and other provisions, as agreed.

5.5 Without prejudice to any other right or remedy either party may have under the Agreement, at law and/or in equity and upon providing written notice of such termination to Customer, either party may terminate the Agreement without any liability being owed thereby by either party to other party, in the event of the occurrence of any of the following:

5.6.1. insolvency of Customer;

5.6.2. filing of a voluntary petition in bankruptcy by Customer;

5.6.3. filing of an involuntary petition in bankruptcy against Customer;

5.6.4. appointment of a receiver or trustee for Customer;

5.6.5. execution by Customer of an assignment or any general assignment (other than an assignment undertaken in connection with a financing) for the benefit of creditors;

5.6.6. commencement of any legal proceeding against Customer that, in USIC's opinion, may interfere with USIC's ability to perform in accordance with the Contract;

5.6.7. or Customer consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and/or sells, assigns or otherwise transfers the Contract; in each case without USIC's advance written consent.

## 6. Investigations of Damage to Customer's Facilities

6.1 Should Customer become aware of any Damage to Customer's Facilities that occurs after USIC has been asked to perform a Locate for Customer, the Customer shall promptly, and not later than twenty-four (24) hours from becoming aware of the Damage, notify USIC. This notification may be made

by calling USIC at 1-800-778-9140 or by sending an email to [USICDispatch@usicllc.com](mailto:USICDispatch@usicllc.com) and should include the street address of the damage location, damage date and size/type of facility. Both parties to this Contract reserve the right and shall be entitled to investigate any reports of Damage to Customer's Facilities.

- 6.2 USIC will investigate incidents of Damage to Customer's Facilities and provide, upon request, a written report of its findings to Customer. Such report will contain USIC's determination as to whether the Damage to Customer's Facilities constitutes a Locator At Fault Damage. Customer shall have thirty (30) days after notification of USIC's completion of the investigation to contest USIC's conclusion. Unless Customer notifies USIC in writing within such time period that it disputes USIC's conclusion as to a Locator At Fault Damage, USIC's conclusion with regard to that issue shall be deemed final and binding with respect to this Contract. If Customer disputes USIC's conclusion, the parties will seek to mutually resolve such dispute and if they cannot, such dispute will be resolved in accordance with section 12.
- 6.3 USIC shall be entitled to collect a Damage Investigation Fee for each investigation, performed by USIC relating to a potential or alleged Damage to Customer's Facilities, unless such investigation concludes or the parties ultimately agree that the damage was Locator At Fault.
- 6.4 Customer agrees that should it fail to notify USIC as provided in section 6.1 of any Damage to Customer's Facilities within ) twenty-four (24) hours after Customer receives notice of the damage, then USIC shall not be liable to Customer for Repair Costs arising from that Damage to Customers' Facilities.
- 6.5 When damages are determined to be Locator at Fault Damage, Customer agrees that USIC will be invoiced for repair costs only with supporting documentation provided with the invoice. Customer agrees not to invoice USIC for third party claims administrator fees.
- 6.6 Customer agrees to submit all supporting documents and detail for any claims related to USIC's failure to perform within 12 months of date of claims

invoice. If USIC does not receive supporting detail to justify the invoice, Customer shall waive the ability to further request payment or withhold payment for USIC due to any contested invoices. This provision does not preclude Customer from seeking remedies in a court of competent jurisdiction. -.

7. Limitation of Liability and Indemnification

- 7.1 USIC will be responsible for paying Customer's Repair Costs only if: a) USIC receives a request to provide Locate Services with respect to Customer's Facilities at the location of the Damage, and b) the Damage to Customer's Facilities constitutes a Locator At Fault Damage. Repair Costs payable by USIC shall at no time collectively exceed \$10,000 per incident. If the Damage to Customer's Facilities is not At Fault Damages or if Customer's Facilities are Unidentifiable Facilities or Unlocatable Facilities, USIC's only responsibility will be to provide whatever support to Customer it can reasonably provide to establish whether the Excavator or another third party is liable for such Damage to Customer's Facilities.
- 7.1 To the fullest extent compliant with applicable law, USIC shall not be liable for loss of profit or revenues, loss of use of equipment or systems, Interruption of Service, cost of replacement power, cost of capital, downtime costs, increased operating costs, administrative costs including third party administrator fees, and any special, consequential, incidental, indirect or punitive damages, or claims of any customers of Customer for any of the foregoing types of damages. Nothing in Sections 7.1 or 7.2 shall be interpreted to limit liability on the part of USIC for wanton, willful, reckless, or grossly negligent conduct on the part of USIC.
- 7.2 Each Customer and USIC (as an "Indemnifying Party") shall defend and indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Customer and USIC, the loss or expense shall be borne by each party in proportion to its

degree of negligence. The Indemnifying Party may retain counsel of its choosing, at its own expense. The Indemnified Party may retain separate or additional counsel as well, but cost of such counsel shall be borne by the Indemnified Party. USIC shall not indemnify Customer for claims resulting from Damages that are not caused by USIC's negligence or for damages to Unidentifiable Facilities, Unlocatable Facilities or Third Party Claims that arise from the sole negligence or willful misconduct of Customer, its agents or employees.

## 8. Price Revisions

- 8.1 At the beginning of each Contract Year subsequent to the first Contract Year, the charges for Locate Services set forth on Exhibit A shall be increased annually by 5%.
- 8.2 Notwithstanding Section 8.3, USIC may, following the first contract year, adjust the prices for Locate Services set forth on Exhibit A upon reasonable justification and thirty (30) days' notice to Customer. Unless Customer contests, in writing within the thirty (30) day notice period, the price increase will become effective on the date identified in USIC's notice. If Customer contests the basis for the price increase as provided above, the parties shall either negotiate a mutually agreeable resolution or resolve the dispute as provided in section 12.1.
- 8.3 USIC will assess and invoice a monthly fuel surcharge per the schedule below, measured each calendar month. The Average Fuel Price per Gallon will be based on "U.S. Regular All Formulations Retail Gasoline Prices" (MonthlyView)at <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM EPM R PTE NUS DPG&f=M>. The corresponding surcharge amount will be multiplied by the quantity of billed Tickets ("Initial Charges" only, defined hereinafter) in the month. For example, if the average fuel price per gallon for a given month warranted a fuel surcharge, USIC would invoice the respective fuel surcharge against billable Tickets for that same month (1,000 Billable Tickets X \$0.30 Fuel Surcharge = \$300 total). [Column 1 to be adjusted prior to execution]

Average Fuel Price per Gallon	Fuel Surcharge per Billed Ticket (Initial Charges)
<\$4.000	No Surcharge
\$4.000 - \$4.499	\$0.45
\$4.500 - \$4.999	\$0.60
\$5.000 - \$5.499	\$0.75
\$5.500 - \$5.999	\$0.90
For each additional \$0.50 tier	Add \$0.15 from previous tier's surcharge amount

- 8.3.1 "Initial Charges" include but are not limited to Per Ticket, Emergency Normal Hours, Emergency After Hours, etc. Fuel surcharges will not be applied to incremental billed units that result from extended time spent on a Ticket.
- 8.3.2 If surcharges are assessed, USIC reserves the right to include the fuel surcharges on a customer's standard invoice or on a separate invoice in a period following the close of the month.
- 8.3.3 Standard payment terms apply to stand-alone fuel surcharge invoices.

9. Environmental Health and Safety Matters

- 9.1 Customer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.
- 9.2 Customer shall timely advise USIC, in writing, of all known Site-specific health, safety, security, and environmental requirements and procedures, which shall include any instructions to USIC's personnel regarding Customer's safety practices. Without limiting Customer's obligations pursuant to Article 3 USIC may, from time-to-time, review and inspect applicable health, safety, security and environmental documentation, requirements and/or procedures at the Site.

- 9.3 If, in USIC's reasonable opinion, the health, safety, or security of personnel at a Site may be imperiled by security risks, terrorist threats/acts, potential exposure to Hazardous Materials, or unsafe working conditions; USIC may: (1) evacuate some or all of its personnel from Site; (2) suspend performance of all or any part of the Contract; (3) remotely perform or supervise work; and/or (4) take any other action necessary to protect such personnel. Upon such action by USIC, Customer may use other available means to complete Customer may reasonably assist in any such evacuation.
- 9.4 Operation of Customer's equipment is the responsibility of Customer. Customer shall not require or permit USIC's personnel to operate Customer's equipment.
- 9.5 USIC has no responsibility or liability for the pre-existing condition of Customer's equipment or the Site. Customer shall keep USIC informed of changes in any such conditions.
- 9.6 USIC shall notify Customer if USIC becomes aware of: (i) conditions at the Site differing materially from those disclosed by Customer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in USIC's cost of, or the time required for, performance of any part of the work under the Contract, all changes shall be addressed pursuant to Sect. 5.4 above.
- 9.7 Information Transfer: As referenced in OSHA 1910.269(a)(3) and (a)(4), before work begins, the appropriate Customer's Representative shall provide USIC access to the following information:
- a. Existing characteristics and conditions of the Customer's installations that are related to the safety of the work to be performed;
  - b. Information about the design and operation of the Customer's installations that USIC needs;
  - c. Arc flash studies;

- d. Ground fault studies;
- e. Hand hole, manhole, and utility vault details; and
- f. Danger poles tagging

9.8 As referenced in OSHA 1910.269(a)(3), USIC shall ensure that each of its employees is instructed in hazardous conditions relevant to the work, and USIC shall advise the Customer of any hazardous conditions found before and during the work.

9.9 If USIC encounters Hazardous Materials in Customer's equipment or at the Site that require special handling or disposal, USIC is not obligated to continue work affected by the hazardous conditions. In such an event, Customer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that USIC's work under the Contract may safely proceed. Customer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of USIC's work at the Site.

9.10 Customer shall indemnify USIC for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Customer's equipment or the Site prior to the commencement of USIC's work, (ii) improperly handled or disposed of by Customer or Customer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than USIC.

10. Equal Employment

10.1 USIC is an equal opportunity employer. We are committed to ensuring equal employment opportunities for all applicants and employees, and do not to discriminate on the basis of sex, race, religion, color, national origin, age, disability, genetic information, or veteran status, or any other basis protected by federal, state or local law.



11. Insurance

11.1 USIC provides the following insurance coverage:

INSURANCE COVERAGE:	LIMITS:
Workers Compensation	Statutory Limit
Employers' Liability	
Each Accident	\$1,000,000
Disease, Policy Limit	\$1,000,000
Disease, Each Employee	\$1,000,000
Comprehensive General Liability (contractual liability limited to terms and conditions of the insurance policy)	
Each Occurrence (bodily injury, advertising injury, personal injury and advertising injury)	\$2,000,000
General Aggregate	\$8,000,000
Products Completed Operations Aggregate	\$8,000,000
Medical Limits	Not Covered
Damages to Premises Rented to You Limit	\$1,000,000
Automobile Liability CSL	\$5,000,000
Cyber	\$10,000,000

12. Dispute Resolution

12.1 The parties agree that any dispute, controversy, or claim arising out of or related to this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Section 12.

12.2 Prior to seeking third party adjudication relating to a dispute under the terms of this Contract, the party will first informally attempt to resolve the dispute with the other party by seeking a meeting with the appropriate higher management representative(s) of the other party via written notice. Such meeting shall be

held within twenty (20) business days after the giving of notice. All negotiations and resolutions pursuant to this Section 12.1 are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may pursue formal resolution in accordance with the below Section 12.3.

- 12.3 The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Disputes") promptly by negotiation between individuals who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All negotiations pursuant to this Section are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

If the Dispute has not been resolved by negotiation within sixty (60) Days of the disputing Party's initial notice, or if the Parties failed to meet for the first time within ten (10) Days of the initial notice, then either Party may initiate arbitration or litigation for matters in dispute of \$250,000 or less. For all matters in dispute over \$250,000, either party may initiate litigation in a court of competent jurisdiction. Either Party shall have the right, in its discretion, to include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in any litigation.

13. Non Solicitation

- 13.1 Customer agrees that during the Term of this Contract and for a period of twelve (12) months thereafter, Customer will not hire or solicit for hire any employee of USIC who has been used by USIC within the last six months for the purpose of providing the Services to Customer.

14. Force Majeure

14.1 Neither party shall be deemed to be in default of this Contract to the extent that any delay or failure to perform its obligations, other than the payment of money, results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, pandemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions or strikes. If USIC claims that it is delayed by such a cause, it shall notify Customer immediately and Customer shall be entitled to obtain the Services from any other person until such cause terminates as evidenced by a notice from USIC that such cause has ended.

15. Contract Modification and Assignment

15.1 This Contract may only be modified or amended by a written instrument signed by an authorized representative of USIC and Customer. The term "Contract" shall include any such future amendments or modifications.

15.2 Neither party may assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, affiliation, operation of law, or any other manner, without at least 60 days' advance notice in writing..

16. Contract Entirety

16.1 This Contract shall constitute the entire contract between the parties with respect to the subject matter of this Contract. Customer and USIC each represent that it has read this Contract, agrees to be bound by all terms and conditions contained in this Contract, and acknowledge receipt of a signed, true exact copy of this Contract.

17. Severability Clause

17.1 The parties expressly agree that if any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force

and effect.

18. Contract Notification

18.1 Any notice, consent or other communication given under this Contract shall be in writing (unless otherwise specified in this Contract as permitting oral or verbal communication) and delivered to the below authorized representative of each party, specifying the subject matter and any other persons at USIC or Customer who should be notified of the notice, consent, or other communication. Notice shall be effective on the date when sent via email or, if delivered via certified mail, such notice shall be effective five (5) days after the date of mailing thereof.

18.1.1 USIC authorized representative:

Attn: Contracts  
9045 River Road, Suite 200  
Indianapolis, IN 46240,  
[contracts@usicllc.com](mailto:contracts@usicllc.com)

18.1.2 Customer authorized representative:

Attn: Director of Nixa Utilities and Public Works  
P.O. Box 395  
1111 W. Kathryn  
Nixa, MO 65714  
[dcolvin@nixa.com](mailto:dcolvin@nixa.com)

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives.

City of Nixa

USIC Locating Services, LLC

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print)

Chuck Adams  
(Please print)

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

Title: Chief Commercial Officer

Date 8/18/2022

**Exhibit B**

USIC Locating Services, LLC shall provide **Electric Distribution, Traffic Signals, Water, Sanitary Sewer** Locating Services:

In the State of **Missouri**

Member Codes (state One-Call CDC or Customer Description Codes): **NIXAC01**

USIC Locating Services, LLC Pricing:

**\$ 20.00 Per Ticket Received from the One Call**

**\$ 40.00 Per Emergency Call Out Ticket**

**\$ 15.00 Project Price Per Quarter Hour for Tickets that Exceed 30 Minutes**

**\$ 150.00 Damage Investigation Fee**

Mail Invoices To: City of Nixa  
ATTN: Accounts Payable  
P.O. Box 395  
Nixa, MO 65714  
Phone: 417-725-3785  
Email: [Imoore@nixa.com](mailto:Imoore@nixa.com), [lwilkerson@nixa.com](mailto:lwilkerson@nixa.com)