



January 31, 2019

To Whom It May Concern:

**ADDENDUM #1**  
**BORING SERVICES IN TOWNE POINT FOR THE CITY OF DOVER ELECTRIC**  
**DEPARTMENT, 19-0014EL.**

Please incorporate the attached "Agreement for Professional Services" with your submission.

Please also consider the following questions and answers in your response to the proposal:

1. Is there a start and completion date on this job?

There is not a firm start and stop date; i.e. 2 weeks after award, but we would expect the boring work to be completed in approximately one (1) year accounting for weekends and weather.

2. Is contractor responsible for all privately owned utilities (sewer lines, water lines, dog fence, electric, etc.)?

The majority of the work will be done in the right of way which will be marked by Miss Utility. On the occasion that boring will be used for house services it will be the responsibility of the winning bidder to coordinate the marking of the privately-owned utilities you mentioned. Per the RFP on page 2 it states:

"The bidder shall be fully responsible for physically uncovering any and all underground utilities which are potentially crossing the proposed path of the proposed underground electric utility. This includes, but is not limited to, unmarked sanitary sewer laterals. Uncovering these utilities will provide a depth of conflicts and shall direct the bidder on how deep to bore the proposed electric utility. The bidder shall utilize safe, prudent, non-destructive exploratory means to uncover the utility. The bidder shall be financially responsible for all aspects of uncovering the underground utility that is being crossed by the proposed underground electric utility. If the bidder fails to uncover the crossing utility and a damage occurs, the bidder shall be fully responsible for any and all costs, fines, etc. associated with the damage."

3. On page 1 of the RFP, under the Scope and Stipulations, it states "The quantity of work is dependent upon the needs of the COD and the funds allocated for this purpose". My question is, will the entire scope of 3,800 ft of 4" and 21,000 ft of 2" be awarded in its entirety to be completed, or will it be distributed to the awarded contractor as funds are available over a 2-year period? I ask because this could drastically change the cost of private locating services that

will need to be included in the pricing. Would it best for us to include the private locating services as a separate line item with a daily unit rate?

We would want the project complete within one (1) year from award. It will cross over two fiscal years.

If you have any questions, please contact me at (302) 736-7795 or email [doverwhse@dover.de.us](mailto:doverwhse@dover.de.us).

Sincerely,

Barry Wolfgang  
Contract and Procurement Manager  
City of Dover  
(302) 736-7795  
Fax (302) 736-7178  
[www.cityofdover.com](http://www.cityofdover.com)

Addendum Receipt Record

RFP 19-0014EL

We have received and reviewed the following Addenda. A copy of this receipt record must accompany the bid submission.

1. Addendum #1, dated January 31, 2019.
2. \_\_\_\_\_, dated \_\_\_\_\_.
3. \_\_\_\_\_, dated \_\_\_\_\_.

FIRM NAME: \_\_\_\_\_

BY: \_\_\_\_\_

PRINTED: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

FEDERAL: \_\_\_\_\_

ID#

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the \_\_\_\_\_, **2019**, between The City of Dover, a Delaware Municipal Corporation, whose address is 15 East Loockerman Street, P.O. Box 475, Dover, Delaware 19903-0475 (CITY), and \_\_\_\_\_, whose address is \_\_\_\_\_ (CONTRACTOR).

Now, therefore, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

### 1. SERVICES

- a. The CONTRACTOR shall perform the services as identified in the **Bid #19-0014EL Directional Boring Contract (Towne Point)**. Nothing herein shall limit the CITY's right to obtain proposals or services from other professionals for similar projects at any time the CITY so chooses.
- b. Duty to Provide Competent Supervision and Performance. The Contractor shall ensure that its employees, servants, agents, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of the CITY, the CITY's other contractors, and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, the CONTRACTOR shall furnish its employees, servants, agents, and subcontractors with competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.
- c. Duty to Inform. The CONTRACTOR further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM FALLING) inherent in the work to be performed under this agreement by CONTRACTOR'S employees, servants, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform CONTRACTOR'S employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

### 2. INDEMNIFICATION

- a. CONTRACTOR Indemnification. CONTRACTOR will indemnify and hold harmless CITY and its officers, directors, employees, agents and representatives from and against any and all claims, assertions, demands, suits, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys fees and disbursements), costs (including court costs), expenses, investigations, inquiries, administrative proceedings, penalties, fines and sanctions

("Claim") sustained or suffered by CITY in connection with injury or death to third parties or loss of or damage to the property of third parties, to the extent caused by Operator's negligent acts or omissions, willful misconduct or violation of any applicable law.

- b. CITY Indemnification. CITY will indemnify and hold harmless CONTRACTOR and its officers, directors, employees, agents and representatives, from and against any Claim sustained or suffered by CONTRACTOR in connection with injury or death to third parties or loss of or damage to property of third parties, to the extent caused by CITY's negligent acts or omissions, willful misconduct or violation of any applicable law.
- c. Claims arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the work, construction, maintenance, repair, presence, use, or operation by CONTRACTOR, or CONTRACTOR'S officers, directors, employees, agents, and sub-contractors, involving intellectual property infringement shall be the responsibility of the CONTRACTOR.

### 3. PROCEDURE FOR INDEMNIFICATION

- a. If a Claim is asserted or action brought against CITY as to which the CITY believes it is entitled to indemnification, the CITY shall promptly notify CONTRACTOR in writing of such Claim. CONTRACTOR may assume the defense of any such Claim and the CITY shall cooperate in all reasonable respects in such defense. If CONTRACTOR does not assume such defense, then the CITY shall have the right to defend such Claim at CONTRACTOR's expense, subject to the right of CONTRACTOR to assume such defense at any time prior to settlement or final determination thereof. In such event, the CITY shall send a written notice to CONTRACTOR of any proposed settlement of any Claim at least five (5) days in advance of such proposed settlement.
- b. If a Claim is asserted or action brought against CONTRACTOR as to which the CONTRACTOR believes it is entitled to indemnification, the CONTRACTOR shall promptly notify CITY in writing of such Claim. CITY may assume the defense of any such Claim and the CONTRACTOR shall cooperate in all reasonable respects in such defense. If CITY does not assume such defense, then the CONTRACTOR shall have the right to defend such Claim at CITY's expense, subject to the right of CITY to assume such defense at any time prior to settlement or final determination thereof. In such event, the CONTRACTOR shall send a written notice to CITY of any proposed settlement of any Claim at least five (5) days in advance of such proposed settlement.

#### 4. INSURANCE

- a. Policies Required. At all times during the term of this Agreement, the CONTRACTOR shall keep in force and affect all insurance policies as described below:
  - i. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than that required by Delaware law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the CITY. The CONTRACTOR shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
  - ii. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence.
  - iii. Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
  - iv. Professional Liability Insurance. CONTRACTOR shall provide professional liability insurance with limits of \$2,000,000 each claim and annual aggregate of \$2,000,000 related to design services performed under this Agreement.
- b. Qualification; Priority; CONTRACTOR'S Coverage. The insurer must be authorized to do business under the laws of the State of Delaware. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of CONTRACTOR shall be responsible for carrying, in full force and effect, worker's compensation and employer's liability, and automobile liability insurance coverage.
- c. Certificate of Insurance; Other Requirements. At the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, CONTRACTOR will furnish the CITY with a Certificate of Insurance with the CITY named as an additional insured (excluding Workers Compensation). The Certificate shall reference this Agreement and worker's compensation and property insurance waivers of subrogation required by this Agreement. CITY shall be given thirty (30)

calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement.

- d. Limits. The limits of liability set out in this Agreement may be increased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase the CITY's exposure to risk.
- e. Deductible/Self-insurance Retention Amounts. CONTRACTOR shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

## 5. WARRANTY

CONTRACTOR WARRANTS THAT ITS SERVICES ARE PERFORMED, WITHIN THE LIMITS PRESCRIBED BY CITY, WITH PROFESSIONAL THOROUGHNESS AND COMPETENCE. THERE IS NO OTHER WARRANTY OR REPRESENTATION, WHETHER STATUTORY, EXPRESSED OR IMPLIED. THE SOLE LIABILITY OF CONTRACTOR RELATING TO THE SERVICES SHALL BE LIMITED TO REPERFORMING AT CONTRACTOR'S EXPENSE ANY SERVICES PERFORMED BY CONTRACTOR WHICH HAVE FAILED TO MEET THE ABOVE WARRANTY, IF SUCH FAILURE IS PROMPTLY REPORTED TO CONTRACTOR NOT LATER THAN 365 DAYS FOLLOWING COMPLETION OF THE APPLICABLE SERVICES. THE FOREGOING REMEDY SHALL BE CITY'S SOLE REMEDY FOR ANY FAILURE OF CONTRACTOR TO COMPLY WITH ITS WARRANTY OBLIGATIONS.

## 6. LIMITATION OF LIABILITY

- A. CONTRACTOR'S TOTAL CUMULATIVE LIABILITY FOR CLAIMS OF ANY KIND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE, FOR ANY LOSS OR DAMAGE RELATING TO THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES, SHALL IN NO CASE EXCEED THE GREATER OF, (I) THE COMPENSATION PAID TO CONTRACTOR PURSUANT TO THE APPLICABLE SERVICES, OR, (II) THE SUM OF INSURANCE PROCEEDS PURSUANT TO THE LIMITS REQUIRED IN SECTION 4.
- B. NEITHER PARTY, ITS OFFICERS, DIRECTORS, REPRESENTATIVES, COUNCIL, OR EMPLOYEES ARE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES.
- C. THE PROVISIONS OF THIS SECTION 6 SHALL APPLY TO ITS DIRECTORS, OFFICERS AND EMPLOYEES, AND AFFILIATES OF

CONTRACTOR AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES, REGARDLESS OF THE FAULT, NEGLIGENCE OR STRICT LIABILITY OF CONTRACTOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES.

- C. ALL OF THE PROVISIONS OF THIS AGREEMENT PROVIDING FOR LIMITATION OF OR PROTECTION AGAINST LIABILITY OF CONTRACTOR SHALL ALSO PROTECT ITS DIRECTORS, OFFICERS AND EMPLOYEES, AND AFFILIATED ENTITIES OF CONTRACTOR AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES, AND SHALL APPLY REGARDLESS OF THE FAULT, NEGLIGENCE OR STRICT LIABILITY OF CONTRACTOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES.
- D. ANY CAUSE OF ACTION OR OTHER CLAIM RELATING TO THE SERVICES MUST BE COMMENCED WITHIN 365 DAYS AFTER COMPLETION (OR TERMINATION) OF THE APPLICABLE SERVICES.
- E. THE PROVISIONS OF THIS SECTION 6 SHALL APPLY NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT.

7. CODES, LAWS, AND REGULATIONS

The CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

8. PERMITS, LICENSES, AND FEES

The CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR performance of the Scope of Services.

9. ACCESS TO RECORDS

The CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during the CONTRACTOR's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

10. CONTINGENT FEES PROHIBITED

The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

#### 11. PAYMENT

CITY shall compensate the CONTRACTOR for its services as set forth in **Bid #19-0014EL Directional Boring Contract (Towne Point)**. All requests for payment shall be accompanied by supporting documentation which will include proof of the specific work being completed on the facility in accordance to the schedule and other CITY required supporting documentation. Any reimbursement for expenses shall include receipts or copies of the invoices. No other expenses or services shall be billed to the CITY.

#### 12. INDEPENDENT CONTRACTOR

The CONTRACTOR is an independent contractor and as such will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this agreement.

#### 13. ASSIGNMENT

Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

#### 14. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

#### 15. DISPUTE RESOLUTION

- a. All disputes concerning interpretation or clarification of this Agreement, or the acceptable performance thereof by CONTRACTOR shall be immediately submitted in writing to CITY for resolution. All determinations, instructions, and clarifications of CITY shall be final and conclusive, unless the CONTRACTOR files with CITY within fourteen (14) days after CITY notifies CONTRACTOR of any such determination, instruction, or clarification, a written protest, stating clearly and in detail the basis thereof. CITY shall respond to such protest within thirty (30) days of its receipt.
- b. In the event that use of the procedures set forth in Section 15a do not lead to satisfactory resolution of the dispute, either Party may send a Notice of Dispute to the other Party and request a conference for resolution of such

dispute. Within three days after delivery of such notice, each Party shall nominate a senior officer of its management to meet at CITY'S offices, or at any other mutually agreed location, to resolve the dispute, which conference shall be convened within ten (10) days after exchange of such nominations unless the Parties mutually agree to another date. In the event the Parties are unable to resolve the dispute through the procedures set forth in Section 15a, either Party shall have the right to pursue the remedies in accordance with the procedures set forth in Section 15c.

- c. Any controversy or claim arising out of or relating to this Agreement or the breach thereof which cannot be resolved amicably under Sections 15a or 15b shall be referred to a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association and settled by binding arbitration. The venue for such arbitration shall be Dover, Delaware. The Parties agree to submit to the jurisdiction of State and Federal courts located in the State of Delaware for the purposes of any proceedings ancillary to the conduct of any such arbitration. The award of the arbitrator shall be final, and a judgment may be entered upon it by any court having jurisdiction. Discovery shall be made available in accordance with the procedures set forth in the Federal Rules of Civil Procedure, but to a degree limited by the arbitrator as the arbitrator deems appropriate to render the proceedings economical, efficient, expeditious and fair. Interest at the rate specified herein shall be added to any monetary award for sums found to have been due under this Agreement. Except as otherwise specified by the arbitrator each Party shall bear its own costs of the arbitration.
- d. During the pendency of any dispute, the Parties will continue to perform the obligations imposed upon them under this Agreement to the fullest extent possible, consistent with their positions in dispute.

#### 14. TERM AND TERMINATION

All services to be rendered by the CONTRACTOR shall be completed **no later than 1 year after award of the contract**. All or part of this Agreement may be terminated by the CITY for its convenience on thirty (30) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination. In the event of termination not the fault of the CONTRACTOR, the CONTRACTOR shall be compensated for with Reimbursable Expenses then due and all Termination Expenses. Contract term is effective on the date of execution (date of latest signature); the execution date will be the reference date for any subsequent annual increases.

15. CONTACT PERSON

The primary contact person under this Agreement for the CONTRACTOR shall be \_\_\_\_\_ . The primary contact person under this Agreement for the CITY shall be **James S. Robinson, Electric Director, (302) 736-7088, City of Dover Electric Department.**

16. APPROVAL OF SERVICE PERSONNEL

The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of the CONTRACTOR pursuant to this Agreement. If the CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of the CONTRACTOR pursuant to this Agreement, the CITY may require the CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the services hereunder.

17. LIABILITY LIMITS.

No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the CITY of any applicable State limits on municipal liability.

18. DISCLAIMER

The CITY makes no express or implied warranties with regard to its structures, fixtures, materials, or other equipment, all of which are hereby disclaimed. The CITY makes no other express or implied warranties, except to the extent expressly set forth in this Agreement. The CITY expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the respective dates under each signature.

\_\_\_\_\_  
By: \_\_\_\_\_  
(Please Print)

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

Signature: \_\_\_\_\_

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

**CITY OF DOVER**

By: James S. Robinson

Title: Electric Director

Signature: \_\_\_\_\_

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