

**RESOLUTION NO. R2022-38**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT  
WITH ENGINEERING RESOURCE ASSOCIATES, INC. FOR  
BATAVIA ROAD SURVEYING AND DESIGN ENGINEERING SERVICES**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the City has budgeted sufficient funds in the 2023 fiscal year for the procurement of surveying and design engineering services for the Batavia Road sidewalk (“Services”); and

WHEREAS, pursuant to the City’s Qualification Based Selection (QBS) Process, as amended March 19, 2018 (“QBS Policy”), City staff has already been working with Engineering Resource Associates, Inc. (“Consultant”) on this project, and it is beneficial for the City to continue working with Consultant to efficiently complete the project; and

WHEREAS, Consultant submitted a proposal to perform the Services (“Proposal”) in the amount of \$17,930.00 plus reimbursable expenses as provided in the Proposal; and

WHEREAS, the City desires to enter into a professional services agreement with Consultant for the performance of the Services (“Agreement”); and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with Consultant for the Services at the price proposed;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

**SECTION 1: Recitals.** The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

**SECTION 2: Approval of Agreement.** The Agreement with Consultant in the amount of \$17,930.00 plus reimbursable expenses as provided in Attachment A of the Agreement, is hereby approved in the form attached to this Resolution as Exhibit A.

**SECTION 3: Execution.** The City Council hereby authorizes and directs the Public Works Director to execute, on behalf of the City, the final Agreement only after receipt by the Public Works Director of at least two executed copies of the Agreement from Consultant; provided, however, that if the Public Works Director does not receive such executed copies of the Agreement from Consultant within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Agreement shall, at the option of the City Council, be null and void.

**SECTION 4: Effective Date.** This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

[VOTING RECORD AND SIGNATURE PAGE FOLLOWS]

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2022.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
MAYOR

ATTEST:

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

**EXHIBIT A**  
**AGREEMENT**

**CITY OF WARRENVILLE  
PROFESSIONAL SERVICES AGREEMENT  
FOR BATAVIA ROAD SIDEWALK SURVEYING AND DESIGN ENGINEERING**

**THIS AGREEMENT** is dated as of the     day of June, 2022 ("**Agreement**") and is by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation ("**City**") and the Consultant identified in Subsection 1A below.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in the Agreement, and pursuant to the City's statutory and home rule powers, the parties agree as follows:

**SECTION 1. CONSULTANT.**

**A. Engagement of Consultant.** The City desires to engage the Consultant identified below to provide all necessary professional consulting services and to perform the work in connection with the project identified below:

ENGINEERING RESOURCE ASSOCIATES, INC. ("Consultant")  
3s701 WEST AVENUE, SUITE 150  
WARRENVILLE, ILLINOIS 60555  
Telephone: 630.393.3060  
Email: [mmichalisko@eraconsultants.com](mailto:mmichalisko@eraconsultants.com)

**B. Project Description.** The scope of work consists of surveying the frontage of 28W512 Batavia Road through 28W550 Batavia Road, including the existing sidewalk, front of buildings, and front yards; boundary surveys to create easement exhibits for 28W520, 28W530, 28W542, and 28W550 Batavia Road, and to design an ADA compliant sidewalk and parking spaces from the Batavia Road crosswalk at Tracy Place to the Illinois Prairie Path northwest of Stafford Place. The intent is to include this work in the contract to resurface Batavia Road between Warrenville Road and Illinois Route 56 / Butterfield Road in 2023.

**C. Representations of Consultant.** The Consultant has submitted to the City a description of the services to be provided by the Consultant, a copy of which is attached as Exhibit A to this Agreement ("**Services**"). The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the professional consulting services set forth in Exhibit A in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

**D. Agreement Amount.** The total amount billed by the Consultant for the Services under this Agreement shall not exceed **\$17,930.00**, as outlined in Exhibit B, plus reimbursable expenses, as identified in Exhibit B, unless amended pursuant to Subsection 8A of this Agreement.

**SECTION 2. SCOPE OF SERVICES.**

**A. Retention of the Consultant.** The City retains the Consultant to perform, and the Consultant agrees to perform, the Services.

**B. Services.** The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

**C. Commencement: Time of Performance.** The Consultant shall commence the Services immediately upon receipt of written notice from the City that this Agreement has been fully executed by the Parties on the date specified in Exhibit A (the “**Commencement Date**”). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services, but in no event later than the date of this Agreement.

**D. Reporting.** The Consultant shall regularly report to the City Administrator, or his designee, regarding the progress of the Services during the term of this Agreement. The City Administrator’s designee shall be the person identified in Section 8.D to receive notice, unless the City Administrator otherwise designates in writing.

### **SECTION 3. COMPENSATION AND METHOD OF PAYMENT.**

**A. Agreement Amount.** The total amount billed for the Proposal and paid by the City during the term of this Agreement shall not exceed the amount identified as the Agreement Amount in Subsection 1D of this Agreement, without the prior express written authorization of the City.

**B. Invoices and Payment.** The Consultant shall be paid as provided in Exhibit B. The Consultant shall submit invoices to the City in an approved format for those portions of the Services performed and completed by the Consultant. The amount billed in any such invoice shall be based on the method of payment set forth in Exhibit B. The City shall pay to the Consultant the amount billed within 30 days after its receipt and approval of such an invoice.

**C. Records.** The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the City or its authorized representative to inspect and audit all data and records of the Consultant for work done under the Agreement. The records shall be made available to the City at reasonable times during the Agreement period, and for three years after the termination of the Agreement.

**D. Claim In Addition To Agreement Amount.** If the Consultant wishes to make a claim for additional compensation as a result of action taken by the City, the Consultant shall provide written notice to the City of such claim within 7 days after occurrence of such action as provided by Subsection 8D of this Agreement, and no claim for additional compensation shall be valid unless made in accordance with this Subsection. Any changes in the Agreement Amount shall be valid only upon written amendment pursuant to Subsection 8A of this Agreement. Regardless of the decision of the City relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement as determined by the City without interruption.

**E. Taxes, Benefits and Royalties.** The Agreement Amount includes all applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

F. **Final Acceptance.** The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the City of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

#### **SECTION 4. PERSONNEL: SUBCONTRACTORS.**

A. **Key Project Personnel.** The Key Project Personnel identified in Exhibit A shall be primarily responsible for carrying out the Services on behalf of the Consultant. Consultant shall notify the City as soon as practicable following resignation or termination of Key Project Personnel. No new Key Project Personnel shall be reassigned or added without the City's prior written approval.

B. **Availability of Personnel.** The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassigning, or resignation.

C. **Approval and Use of Subcontractors.** The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by the City in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by the Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

D. **Removal of Personnel and Subcontractors.** If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City, the Consultant shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

#### **SECTION 5. CONFIDENTIAL INFORMATION.**

A. **Confidential Information.** The term "***Confidential Information***" shall mean information in the possession or under the control of the City relating to the technical, business or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of said information to the Consultant under this Agreement ("***Time of Disclosure***"); (ii) to have

been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (iv) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

**B. No Disclosure of Confidential Information by the Consultant.** The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

#### **SECTION 6. STANDARD OF CARE; INDEMNIFICATION; INSURANCE.**

**A. Standard of Care for Services.** The Consultant represents and certifies that the Services shall be performed in accordance with the highest standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

**B. Indemnification.** The Consultant shall, without regard to the availability or unavailability of any insurance, either of the City or the Consultant, indemnify, save harmless, and defend the City, and its officials, employees, agents, and attorneys against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that arise, or may be alleged to have arisen, out of or in connection with, the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications pursuant to Subsection 6.A of this Agreement (but not the performance or failure of a contractor not retained by Consultant), whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Consultant, except to the extent caused by the sole negligence of the City.

**C. Insurance.** Contemporaneous with the Consultant's execution of this Agreement, the Consultant shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth in Exhibit C to this Agreement. For good cause shown, the City Administrator may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the City Administrator may impose in the exercise of his sole discretion. Such certificates and policies shall be in a form acceptable to the City and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to the City. The Consultant shall, at all times during the term of this Agreement, maintain and keep in force, at the Consultant's expense, the insurance coverages provided above, including, without limitation, at all times while correcting any failure to meet the warranty requirements of Subsection 6A, Warranty of Services, of this Agreement.

D. **No Personal Liability.** No elected or appointed official, or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

**SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.**

A. **Relationship of the Parties.** The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the City and Consultant; or (ii) to create any relationship between the City and any subcontractor of the Consultant.

B. **Conflict of Interest.** The Consultant represents and certifies that, to the best of its knowledge, (1) no elected or appointed City official, employee or agent is interested in the business of the Consultant or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. **No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. **Sexual Harassment Policy.** The Consultant certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4).

E. **Patriot Act Compliance.** The Consultant represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the City that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable



attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

**F. Termination.** Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon 15 days prior written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred or reasonable expenses that Consultant is legally obligated to pay, if any, prior to termination, not exceeding the value of the Services completed as determined as provided in Exhibit B.

**G. Term.** The Time of Performance of this Agreement, unless terminated pursuant to the terms of this Agreement, shall expire on the date the City Administrator determines that all of the Services under this Agreement, including warranty services, are completed. A determination of completion shall not constitute a waiver of any rights or claims which the City may have or thereafter acquire with respect to any breach hereof by the Consultant or any right of indemnification of the City by the Consultant.

**H. Compliance with Laws and Grants.** Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Consultant shall also comply with all conditions of any federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services.

Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

**I. Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("***Event of Default***"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the City, then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

**1. Cure by Consultant.** The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement.

3. **Withholding of Payment by City.** The City may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

J. **No Additional Obligation.** The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant, or with any vendor solicited or recommended by the Consultant.

K. **City Council Authority.** Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to vendors shall be subject to the approval of the City Council. The City shall not be liable to any vendor or other third party for any agreements made by the Consultant, purportedly on behalf of the City, without the knowledge and approval of the City Council.

L. **Mutual Cooperation.** The City agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the City may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the City in the performance of the Services to complete the Work and with any other consultants engaged by the City.

M. **News Releases.** The Consultant shall not issue any news releases or other public statements regarding the Services without prior written approval from the City Administrator.

N. **Ownership.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received by the Consultant in connection with any or all of the Services to be performed under this Agreement ("***Documents***") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

O. **City Data.** The City has developed various types of data and information, such as digital map information through Geographic Information Systems Technology and through Auto CAD and other methods (collectively "***City Data***") concerning the real property located within the City. If requested to do so by the Consultant, the City agrees to supply the Consultant with a digital copy of the City Data, subject to the following conditions:

1. **Limited Access to City Data.** The City Data provided by the City shall be limited to the scope of the Work that the Consultant is to provide for the City;

2. **Purpose of City Data.** The Consultant shall limit its use of the City Data to its intended purpose of furtherance of the Work; and

3. **Agreement with Respect to City Data.** The Consultant does hereby acknowledge and agree that:

- a. **Trade Secrets of the City.** The City Data constitutes proprietary materials and trade secrets of the City and, shall remain the property of the City;
- b. **Consent of City Required.** The Consultant will not provide or make available the City Data in any form to anyone without the prior written consent of the City Administrator;
- c. **Supply to City.** At the request of the City, the Consultant shall supply the City with any and all information that may have been developed by the Consultant based on the City Data;
- d. **No Guarantee of Accuracy.** The City makes no guarantee as to the accuracy, completeness, or suitability of the City Data in regard to the Consultant's intended use thereof; and
- e. **Discontinuation of Use.** At such time as the Services have been completed to the satisfaction of the City, the Consultant shall cease its use of the City Data for any purpose whatsoever; and, upon request, an authorized representative of the City shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify that all use of the City Data has been discontinued.

#### **SECTION 8. GENERAL PROVISIONS.**

- A. **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.
- B. **Assignment.** This Agreement may not be assigned by the City or by the Consultant without the prior written consent of the other party.
- C. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.
- D. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. Email notices shall be deemed valid and received by the addressee thereof when delivered by email and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Warrenville  
3S258 Manning Avenue  
Warrenville, Illinois 60555  
Attention: Philip M. Kuchler  
Email: [pkuchler@warrenville.il.us](mailto:pkuchler@warrenville.il.us)

With a copy to:

Elrod Friedman LLP  
325 N. LaSalle Dr., Suite 450  
Chicago, Illinois 60654  
Attention: Brooke Lenneman

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Engineering Resource Associates, Inc.  
3s701 West Avenue, Suite 150  
Warrenville, IL 60555  
Attention: Mr. Marty Michalisko, P.E.  
Facsimile: 630.393.2152  
Email: [mmichalisko@eraconsultants.com](mailto:mmichalisko@eraconsultants.com)

**E. Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than the Consultant shall be made or be valid against the City.

**F. Provisions Severable.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**G. Time.** Time is of the essence in the performance of this Agreement.

**H. Governing Laws.** This Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

**I. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the City and the Consultant with respect to the Proposal and the Services.

**J. Waiver.** No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

K. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

L. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

M. **Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

N. **Exhibits.** Exhibits A, B, and C are attached hereto, and by this reference incorporated in and made a part of this Agreement. In the event of a conflict between the Exhibit and the text of this Agreement, the text of this Agreement shall control.

O. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

P. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**CITY OF WARRENVILLE**

By: \_\_\_\_\_  
Philip M. Kuchler, Public Works Director

**ATTEST/WITNESS**

**ENGINEERING RESOURCE ASSOCIATES, INC.**

By: *Julie Wideman*  
Title: *Project Coordinator*

By: *[Signature]*  
Its: *PRINCIPAL*

**EXHIBIT A**  
**DESCRIPTION OF SERVICES**

May 25, 2022

Phil Kuchler  
Public Works Director  
City of Warrenville  
3S258 Manning Avenue  
Warrenville, IL 60555

**SUBJECT: Proposal for Engineering Services for Batavia Road Sidewalk Improvements  
Warrenville, Illinois**

Dear Phil:

Engineering Resource Associates, Inc. (ERA) is pleased to submit this proposal for engineering services for the Batavia Road Sidewalk Improvements.

### **Project Understanding**

The City of Warrenville desires to reconstruct the sidewalk along Batavia Road from approximately Stafford Place to 500' southeast. The City is now looking to retain ERA to survey the area, put together a simple site improvement plan that can be bid and constructed in the summer/fall of 2022, and to complete plats of survey for four properties.

### **Scope of Services**

ERA will provide engineering services in accordance with the following work plan:

1. **Project Meetings and Coordination** – The proposed improvements are anticipated to be simple. General project coordination will be performed via emails and phone calls. One meeting is anticipated with the City.
2. **Field Survey** – This task consists of a topographic survey within the project limits. The project limits are shown on the image below. The survey will be done utilizing DuPage County benchmarks and in state plane ground coordinates (NGVD 88 vertical and USGS NAD 83 horizontal). Survey information will be downloaded directly into our AutoCAD based electronic drafting system. The following planimetric will be surveyed:
  - a. Vertical and horizontal locations of topographic features within the project corridor
  - b. Top of foundation elevations along the building
  - c. Elevations and locations of equipment within the project limits
  - d. Driveways, sidewalks, and structures located within 15 feet of the project location will be located.
  - e. Inventory and survey of utility structures including rim to invert depths, pipe types and sizes.

#### **WARRENVILLE**

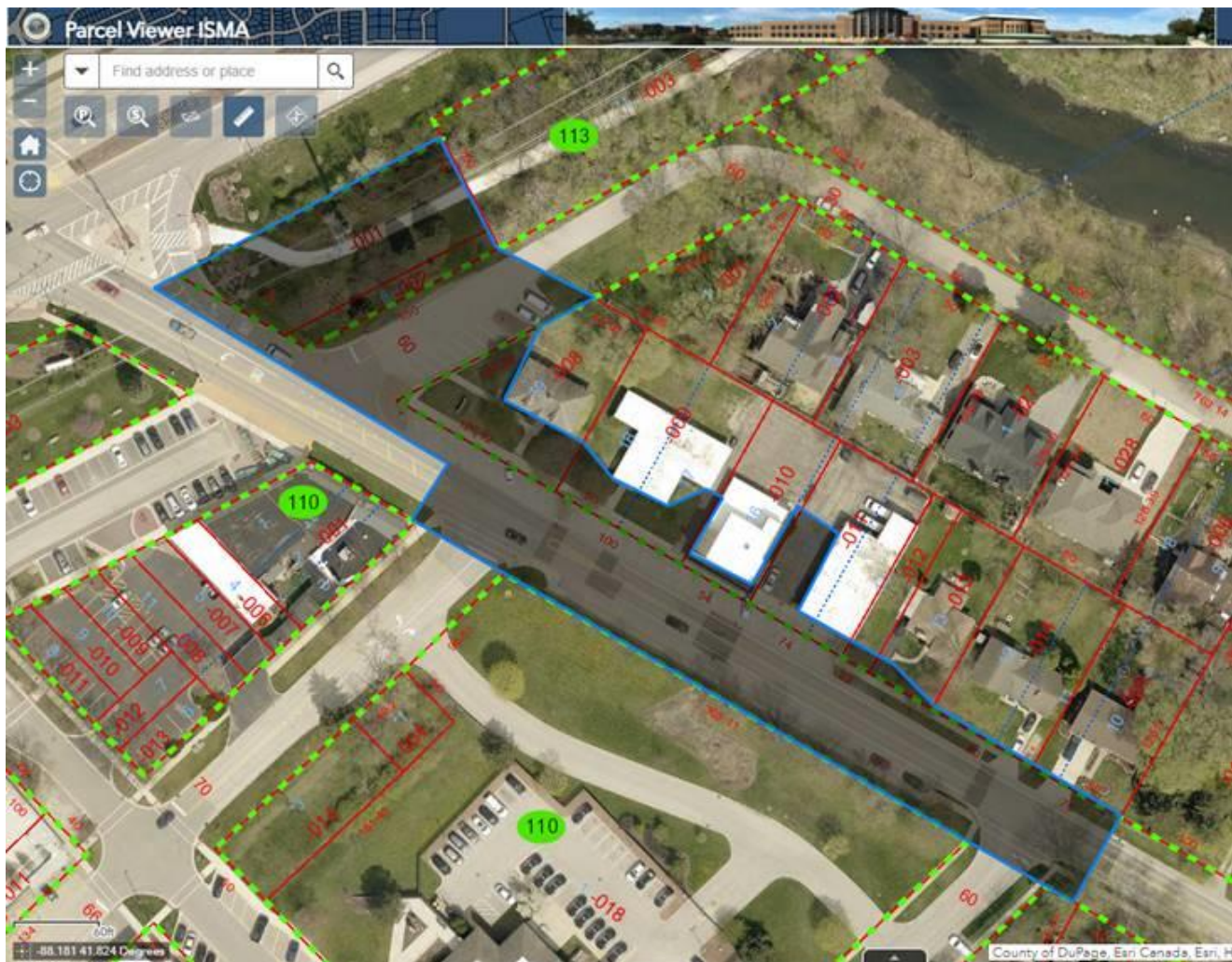
3S701 WEST AVENUE, SUITE 150  
WARRENVILLE, IL 60555  
P 630.393.3060

#### **CHICAGO**

10 SOUTH RIVERSIDE PLAZA, SUITE 875  
CHICAGO, IL 60606  
P 312.474.7841

#### **CHAMPAIGN**

2416 GALEN DRIVE  
CHAMPAIGN, IL 61821  
P 217.351.6268



3. **Base Plans** – Information compiled from the field survey will be combined to produce base plans at a scale of 1" = 20' horizontal. Base plans will be prepared using our AutoCAD based system conforming to City of Warrenville graphic standards. Base plans on 24" x 36" sheets will be submitted to the City for review and comments.
4. **Plats of Surveys** –ERA will prepare Plats of Surveys for the four properties located southeast of Stafford Place. It is anticipated that the sidewalk will be located on private property at these locations.
5. **Plans and Estimates** –This task includes the preparation of design plans in accordance with the City of Warrenville standard format. The plan set will include the following sheets:

a. Cover Sheet, Location Map, and Index of Sheets	1 Sheet
b. Legend, General Notes, Summary of Quantities	1 Sheet
c. Existing Conditions	1 Sheet
d. Proposed Improvements	1 Sheet
e. Construction Details	1 Sheet

**Total                    5 Sheets**





Specifications will be prepared as notes and requirements on the plan set. The City will provide their standard contract documents if this is to be bid. Plans will be submitted for review and approval at the 90% and 100% bid documents stages of completion.

This task also includes the preparation of a final engineer's opinion of probable construction cost for the proposed improvements.

### **Schedule**

The work described in this agreement will be performed as expeditiously as weather and other physical conditions permit. The Engineer shall not be liable to the Owner, if delayed in, or prevented from performing the work as specified herein through any cause or causes beyond the control of the Engineer and not caused by his own fault or negligence including acts of God, or the public enemy, inclement weather conditions, acts of the government after the effective date of this agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

### **Hours and Fees**

Hours and fees for engineering services described in this proposal are proposed on an hourly not-to-exceed basis.

We appreciate the opportunity to submit this proposal and trust that it meets your approval. If you have any questions, please contact me at 630.393.3060 or [mmichalisko@eraconsultants.com](mailto:mmichalisko@eraconsultants.com). The attached general terms and conditions are expressly incorporated into and are an integral part of this proposal for engineering services.

Sincerely,  
ENGINEERING RESOURCE ASSOCIATES, INC.  
WARRENVILLE



Marty Michalisko, P.E., CFM  
Project Manager

**EXHIBIT B**  
**COST PROPOSAL**

**EXHIBIT F-1**

**COST ESTIMATE FOR CONSULTANT SERVICES**

ROUTE: \_\_\_\_\_ DATE: 05/24/2022  
 PROJECT: Batavia Road Improvements  
 SECTION: \_\_\_\_\_  
 COUNTY: DuPage  
 JOB NO.: \_\_\_\_\_

CONSULTANT: Engineering Resource Associates, Inc.  
 OVERHEAD RATE: Overhead and Profit Included in Hourly Rates COMPLEXITY FACTOR: 0

ITEM	MANHOURS (A)	FEE (B)	OVERHEAD & FRINGE BENEFIT (C)	IN-HOUSE DIRECT COSTS (D)	FIXED FEE (E)	SERVICES BY OTHERS (F)	TOTAL (G)	% OF GRAND TOTAL (H)
1 Project Meetings and Coordination	4	\$680.00	-		-		\$680.00	3.73%
2 Field Survey	19	\$2,070.00	-		-		\$2,070.00	11.35%
3 Base Plans	9	\$1,100.00	-		-		\$1,100.00	6.03%
4 Plats of Surveys	40	\$5,000.00	-		-		\$5,000.00	27.41%
5 Plans and Estimates	76	\$9,080.00	-		-		\$9,080.00	49.78%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
	0	\$0.00	-		-		\$0.00	0.00%
Printing and Mileage				\$50.00			\$50.00	0.27%
<b>TOTALS</b>	148	\$17,930.00	-	\$50.00	-	\$0.00	\$17,980.00	98.57%



**EXHIBIT F-2**  
**AVERAGE HOURLY RATES**

CONSULTANT: Engineering Resource Associates, Inc.  
 ROUTE: \_\_\_\_\_  
 PROJECT: Batavia Road Improvements  
 SECTION: \_\_\_\_\_  
 COUNTY: DuPage  
 JOB NO.: \_\_\_\_\_

DATE: 05/24/2022

SHEET 1 OF 3

PAYROLL CLASSIFICATION	HOURLY RATE	Project Meetings and Coordination			Field Survey			Base Plans			Plats of Surveys						
		HOURS	% PART	WGTD RATE	HOURS	% PART	WGTD RATE	HOURS	% PART	WGTD RATE	HOURS	% PART	WGTD RATE				
PROJECT DIRECTOR	\$175.00																
PROJECT MANAGER	\$170.00	4	100.0%	\$170.00	1	5.3%	\$8.95										
SENIOR PROJECT ENGINEER	\$140.00									1	11.1%	\$15.56					
STRUCTURAL ENGINEER	\$160.00																
PROJECT ENGINEER	\$130.00																
DESIGN ENGINEER	\$100.00																
ENVIRONMENTAL DIRECTOR	\$160.00																
SENIOR CAD TECHNICIAN	\$120.00									8	88.9%	\$106.67			20	50.0%	\$60.00
CAD/GIS TECHNICIAN	\$100.00																
PROFESSIONAL LAND SURVEYOR	\$150.00				2	10.5%	\$15.79								12	30.0%	\$45.00
SURVEY CREW CHIEF	\$100.00				16	84.2%	\$84.21								8	20.0%	\$20.00
TOTALS		4	100.0%	\$170.00	19	100.0%	\$108.95			9	100.0%	\$122.22			40	100.0%	\$125.00

**EXHIBIT C**

**INSURANCE COVERAGES**

- A. Worker's Compensation and Employer's Liability with limits not less than: (1) Worker's Compensation: Statutory;
  - (2) Employer's Liability:
    - \$500,000 injury-per occurrence
    - \$500,000 disease-per employee
    - \$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

- B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.

All employees shall be included as insureds.

- C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:
  - \$1,000,000 Bodily Injury and Property Damage Combined Single Limit Coverage is to be written on an "occurrence" bases.

Coverages shall include:

- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

- D. Professional Liability Insurance. With a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.

- E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

- F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:

- Worker's Compensation
- Professional Liability

Each such additional Insured endorsement shall identify Owner as follows: City of Warrenville, including its City Council members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives.

- G. Other Parties as Additional Insureds. In addition to Owner, the following parties shall be named as additional insured on the following policies:

<u>Additional Insured</u>	<u>Policy or Policies</u>
None	
_____	_____
_____	_____
_____	_____