

Ordinance No. 12- 01

**AN ORDINANCE APPROVING AN AGREEMENT
WITH USIC LOCATING SERVICES, INC.**

*BE IT ORDAINED BY THE SOUTH SANGAMON WATER COMMISSION, AS
FOLLOWS:*

SECTION 1: That Underground Facilities Locating and Marking Service Agreement between USIC Locating Services, Inc. and the South Sangamon Water Commission, a copy of which is attached hereto, is hereby approved.

SECTION 2: The Chairman of the Commission is authorized and directed to approve said agreement on behalf of the Commission, and the proper officers of the Commission are authorized and directed to carry out the agreement by its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 17th day of January, 2012.



CHAIRMAN

ATTEST:



Clerk

AYES: McCord, Pffifer _____

NAYS: none _____

PASSED: 1/17/2012 _____

APPROVED: 1/17/2012 _____

ABSENT: Hall _____

UNDERGROUND FACILITIES LOCATING AND MARKING
SERVICE AGREEMENT

THIS CONTRACT is entered into as of January 11, 2012, and is by and between USIC Locating Services, Inc., an Indiana Corporation, (**USIC**), and South Sangamon Water Commission (**Customer**).

BACKGROUND

- A. Customer owns and operates underground facilities in the geographic area described on Attachment A to this Agreement (**Contract Service Area**).
- B. Customer desires to have USIC provide the necessary labor and equipment to provide certain services relative to locating and marking Customer's underground facilities in the Contract Service Area.

AGREEMENT

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 Agreement shall have the following meanings:
 - 1.1 **APWA** means the American Public Works Association and its Underground Utility Location and Coordination Council.
 - 1.2 **At Fault Damages** means Damage to Customer's Facilities caused by an Excavator that occurs with respect to Locatable Facilities where USIC did not perform the Locate with Reasonable Accuracy.
 - 1.3 **Contract Year** means the 365 (366 if period includes February during a leap year) days beginning with the date this agreement begins and the anniversary date each year after.

- 1.4 **Customer's Facilities** means any Underground Facilities owned by Customer.
- 1.5 **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.
- 1.6 **Excavator** means any person who engages directly in excavation.
- 1.7 **High Profile Facilities** means fiber cable, 900 pair or greater, switchgear cable, and 6" main or greater.
- 1.8 **Interruption of Service** means an interruption in the services provided by Customer to its customers arising from a Damage to Customer's Facilities.
- 1.9 **Locatable Facilities** means Customer's Facilities that can be field marked with Reasonable Accuracy by using devices designed to respond to the presence of Customer's Facilities, together with records of sufficient accuracy, but shall specifically not include Unidentifiable Facilities and Unlocatable Facilities.
- 1.10 **Locate** means the completed process of having provided Locate Services at an excavation site.
- 1.11 **Locate Service** means the process of determining the presence or absence of Customer's Facilities, their conflict with proposed excavations, and the Marking of the proper places or routes of Customer's Facilities within Reasonable Accuracy limits as required.
- 1.12 **Low Profile Facilities** means any of Customer's Facilities that are not High Profile Facilities.

- 1.13 **Marking** means the use of stakes and flags, paint strips or other clearly identifiable materials at appropriate distances and at each divergence from a straight line in accordance with the current marking standards of the APWA to show the field location of Underground Facilities accurately.
- 1.14 **Project Locate** means a Locate that requires USIC to spend more than one (1) hour at the excavation site.
- 1.15 **Reasonable Accuracy** means the placement of appropriate Markings eighteen (18) inches of the outside dimensions of both sides of an Underground Facility.
- 1.16 **Restoration Costs** means the actual costs incurred by Customer to repair Damage to Customer's Facilities arising from At Fault Damages, but shall specifically exclude any Third Party Claims. Restoration Costs is equal to only the actual labor, equipment and material costs incurred by Customer to repair the Damage to Customer's Facilities. Restoration Costs specifically exclude 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), costs arising out of collection actions, whether incurred by the Customer or collection agencies.
- 1.17 **Services** mean the services to be provided by USIC under this Agreement.
- 1.18 **Site Surveillance** means to watch over and protect Customer's Facilities during unusual or extensive excavation projects (i.e. road widening projects, sewer projects, etc.) and providing such continuous on-site Locate Services as may be dictated by the nature and scope of the excavations. Commonly referred to as a "Watchdog" within the industry.
- 1.19 **Third Party Claims** means any claims for losses, fines, penalties, damages or expenses made by a person not a party to this Agreement arising from 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) Interruption of Service.

- 1.20 **Underground Facilities** means any item buried or placed below the ground for use 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 below ground.
- 1.21 **Unidentifiable Facilities** means Customer's Facilities that are neither apparent on the records provided by Customer or from a Visual Examination.
- 1.22 **Unlocatable Facilities** means Customer's Facilities whose presence is known either from records provided by Customer or a Visual Examination, but which cannot be field marked with Reasonable Accuracy using standard procedures employed by USIC.
- 1.23 **Visual Examination** means an attempt to determine the existence of Customer's Facilities at an excavation site by a reasonable visual inspection rather than from Customer's maps and records.

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 3.1. USIC will receive transmittals directly from the one-call center for the Contract Service Area at no additional cost to Customer.
- 2.2 Upon receipt of a request for a Locate, USIC will determine 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 Locatable Facilities present at the excavation site, it 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. Customer also agrees that, notwithstanding anything to the contrary contained in this Agreement, 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.
- 2.7 Any maps and records furnished by Customer pursuant to section 3.1 shall remain the property of Customer. USIC agrees to return all copies of such maps and records to Customer upon Customer's written request or at the termination of this Agreement. Unless such maps and records were previously known to USIC free of any obligation to keep them confidential, are given to USIC by a third party not obligated to keep them confidential, or become public without any act or omission of USIC, USIC agrees to keep such maps and records confidential and shall use such maps and records only in the performance of this Agreement except upon such terms as may be agreed upon by Customer or as required by law. This obligation of confidentiality shall survive the termination of this Agreement.
- 2.8 Subject to the terms of section 3.2, USIC shall perform the Services as an independent contractor and as such it 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; 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; and that it will be responsible for its own acts.

2.9 USIC shall not subcontract the Services or any part of the Services without the prior written approval of Customer, which approval Customer may choose to withhold in its sole discretion.

2.10 USIC shall comply with the provisions of all applicable permits and licenses relative to the services to be performed hereunder. USIC shall comply with all applicable laws, ordinances and regulations of the United States, the State or States where the Services are performed, and any unit of local government correctly asserting jurisdiction, applicable to the Services (including, but not limited to Worker's Compensation, Unemployment Insurance and Social Security).

3. Responsibilities of Customer.

3.1 Customer agrees to provide USIC with the necessary maps and records to permit USIC to provide the Locate Services.

3.2 Customer agrees that it will reasonably cooperate with USIC so that USIC enjoys the same protection under the laws applicable to the Customer regarding Third Party Claims as the Customer would enjoy if it were performing the Services.

3.3 Customer will pay USIC for the Locate Services in accordance with the charges set forth on Exhibit B. USIC shall bill for all tickets received from the State One Call, on behalf of Customer. USIC will not be responsible for the accuracy, updates to or the completeness of the definition of the Customer's service area that Customer has provided to the State One Call center

4. Term, Termination and Exclusive Nature of Agreement

- 4.1 This Agreement shall be effective as of January 16, 2012, 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 4.3.
- 4.2 Customer shall use USIC as its exclusive provider of Locate Services within the Contract Service Area.
- 4.3 Either party to this Agreement can terminate this Agreement upon thirty (30) days prior written notice to the other. Upon such termination the only liability will be that of the Customer for any Services performed by USIC prior to the effective date of termination.

5. Investigations of Damage to Customer's Facilities

- 5.1 Should either party to this Agreement become aware of any Damage to Customer's Facilities that occurs after USIC has been asked to perform a Locate with respect to the Customer's Facilities, the party learning of the Damage to Customer's Facilities shall promptly notify the other party. This notification may be made orally. Both parties to this Agreement reserve the right and shall be entitled to investigate any reports of Damage to Customer's Facilities.
- 5.2 USIC will investigate incidents of Damage to Customer's Facilities and provide a written report of its findings to Customer upon request. Such report will contain USIC's determination as to whether the Damage to Customer's Facilities constitutes At Fault Damages. Customer shall have thirty (30) days after receipt of USIC's written report to contest USIC's conclusion. Unless Customer notifies USIC in writing within such period that it disputes USIC's conclusion as to At Fault Damages, USIC's conclusion with regard to that issue shall be deemed binding with respect to this Agreement. 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 11.1.

- 5.3 USIC shall be entitled to collect an investigation fee for each investigation and written report thereof, which it provides to Customer, unless such report concludes or the parties ultimately agree that the report involves At Fault Damages.
- 5.4 Customer agrees that should it fail to notify USIC as provided in section 5.1 of any Damage to Customer's Facilities within forty-eight (48) hours after Customer receives notice of the damage and USIC is otherwise unaware of the damage within that period, then USIC shall not be liable to Customer for Restoration Costs arising from that Damage to Customers' Facilities and Customer shall indemnify USIC against Third Party Claims in accordance with section 7.1, even if it is later determined that such damage constitutes At Fault Damages.

6. LIMITATION OF LIABILITY and INDEMNIFICATION OF CUSTOMER BY USIC

- 6.1 If USIC receives a request to provide Locate Services with respect to Customer's Facilities or provides Site Surveillance and Damage to Customer's Facilities occurs and constitutes an At Fault Damage, then USIC will be responsible for paying Customer's Restoration Costs. However, restoration costs payable by USIC shall at no time collectively exceed \$ 2,000.00 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. USIC shall indemnify and hold Customer, its agents, employees, officers, directors and shareholders (**Customer Indemnities**) harmless from and against any and all Third Party Claims to the extent the same arise from At Fault Damages; provided, however, USIC shall not indemnify Customer Indemnities for Third Party Claims arising from Damages that are not At Fault Damages or damages to Unidentifiable Facilities or Unlocatable Facilities or for

Third Party Claims that arise from the negligence or willful misconduct of Customer, its agents or employees.

7. Indemnification of USIC by Customer

7.1 Customer shall indemnify and hold USIC, its agents, employees, officers, directors and shareholders (**USIC Indemnities**) harmless from and against any and all Third Party Claims to the extent the same arise from Damage to Customer Facilities if the Customer's Facilities were either Unidentifiable Facilities or Unlocatable Facilities or if the Third Party Claims arose from the negligence or willful misconduct of Customer, its agents or employees.

8. Price Revisions

8.1 USIC may adjust the prices for Locate Services set forth on Exhibit B upon thirty (30) days notice to Customer, provided that USIC provides Customer evidence that such price increase results from either (a) an increase in USIC costs for providing the Services that exceeds the average rate of inflation for the period since USIC's most recent price increase; (b) a material change in the one-call statute effective within the Contract Service Area; or (c) a change in the mix of the number or types of Locates on which the pricing set forth in Exhibit A was based. Unless Customer contests, in writing within the thirty (30) day notice period, the evidence provided by USIC 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 11.1. At the beginning of each Contract Year subsequent to the first Contract Year, the charges for Locate Services set forth on Exhibit B shall be increased by a percentage that is equal to the percentage increase, if any, in the Consumer Price Index (as hereinafter defined), (latest published 12-month rolling data) from that last published on the first day of the immediately preceding Contract Year to that last published on the first day of the current Contract Year. The Consumer Price Index means the Consumer Price Index For All Urban Consumers-United States Average-All Items

(1982-84=100), published by The Bureau of Labor Statistics of the United States Department of Labor, or in the event of discontinuance of that index or substantial change in the formula by which that index is determined, then the published index most closely approximating that index as that index is determined as of the date of this Contract.

8.2 USIC may on a biannual basis adjust fees based upon fluctuation in fuel prices. The adjustment will be based on “U.S. Regular Conventional Retail Gas Prices” from the US Department of Energy site: http://www.eia.doe.gov/oil_gas/petroleum/data_publications/wrgp/mogas_history.html. The average fuel price over the previous 6-months will be reviewed every Contract Year on January 1st and July 1st and pricing will be adjusted when applicable based the average fuel price as outlined in the chart below. There will be no adjustment in fees as long as the average fuel price is at or below \$3.99. For example, if the average fuel price for the previous 6-months is \$4.00 - \$4.49 on July 1, fees will be increased by 1.50% for the next 6-month period through December 31st. If the reviewed average 6-month fuel price (on January 1st or July 1st) drops below \$4.00, the increases will cease to be in effect.

6-month Average Fuel	
Price per Gallon	Rate Increase
\$4.00 - \$4.49	1.50%
\$4.50 - \$4.99	Additional 1.00%
\$5.00 - \$5.49	Additional 1.00%
\$5.50 +	Additional 1.00%

9. Equal Employment

9.1 USIC acknowledges that it is an equal opportunity employer. No provisions or application of this Agreement shall cause or result in discrimination against any employee or applicant for employment in his or her hiring, tenure, or condition of employment because of race, color, religion, sex or national origin.

10. Insurance

10.1 USIC provides the following insurance coverage:

<u>INSURANCE COVERAGE:</u>	<u>LIMITS:</u>
Worker's 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	
including Contractual Liability	\$1,000,000 Each Occurrence
Occurrence Basis BI & PD	\$1,000,000 Each Occurrence
	\$2,000,000 General Aggregate (Each occurrence)
Personal Injury	\$1,000,000 Each Occurrence
Products & Completed Operations	\$2,000,000 Each Occurrence
Automobile Liability	
BI & PD Combined	\$1,000,000 Each Occurrence
Umbrella	\$5,000,000

11. Dispute Resolution

11.1 The parties shall attempt in good faith to resolve all disputes (**Controversy**) promptly by negotiation, as follows. Any party may give the other party written notice of any Controversy not resolved in the normal course of business. Executives of both parties at levels one level above the personnel who have previously been involved in the Controversy shall meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Controversy. If the matter has not been resolved within thirty days from the referral of the Controversy to senior executives, or if no meeting of senior executives has taken place within fifteen days after such referral and if the Controversy is over the amount

of Restoration Costs owed by USIC to Customer, the parties shall simply split the difference between their respective positions. If more than two Controversies within a given contract year result in a split of the difference under the preceding sentence or if a Controversy involves more than simply a dispute about Restoration Costs, the parties hereto reserve to themselves the right to litigate any such disputes in an appropriate forum. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State rules of evidence.

12. Miscellaneous

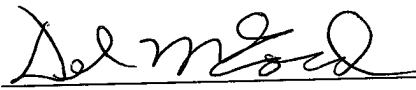
- 12.1 Neither party shall be deemed to be in default of this Agreement to the extent that any delay or failure to perform its obligations, other than the payment of money, results from any cause beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, 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.
- 12.2 This Agreement may only be modified or amended by a written instrument signed by an authorized representative of USIC and Customer. The term "Agreement" shall include any such future amendments or modifications.
- 12.3 This Agreement shall constitute the entire contract between the parties with respect to the subject matter of this Agreement. Customer and USIC each represent that it has read this Contract, agrees to be bound by all terms and conditions contained in this Agreement, and acknowledge receipt of a signed, true exact copy of this Agreement.

12.4 Customer agrees that during the Term of this Agreement and for a period of six (6) 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.

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

South Sangamon Water Commission

USIC Locating Services, Inc.

By: 
(Signature)

By: _____
(Signature)

Del McCord
(Please print)

Tim Seelig
(Please print)

Title: chairman

Title: Sr. Vice President

Date 01/11/2012

South Sangamon Water Commission
Attn: Terry Burke
P.O. Box 83
New Berlin, IL 62670-0083

Exhibit A

USIC Locating Services, Inc. shall provide services in the State of Illinois.

Exhibit B

USIC Locating Service Inc. will charge for services rendered hereunder:

\$ 25.00 Per Ticket Received from the One Call (including all ticket revisions and updates)

\$ 11.00 Per quarter hour Projects (exceeding 60 minutes)

**\$ 44.00 Per After Hour Call Outs (Flat Fee)
(Holidays, Weekends, & Weekdays between 5pm-7am)**

Optional

\$ 200.00 Per hour for Custom Customer Portal development

Mail Invoices To: South Sangamon Water Commission
 Attn: Bill Pfeffer
 P.O. Box 83
 New Berlin, IL 62670-0083

USIC shall render invoices and statements to Customer on a monthly basis. Each statement shall be paid by Customer within thirty (30) days of invoice date.

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the South Sangamon Water Commission.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 12- 01, adopted by the Commission on the 17th day of January, 2012, said Ordinance being entitled:

**AN ORDINANCE APPROVING AN AGREEMENT
WITH USIC LOCATING SERVICES, INC.**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Commission, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 17th day of January, 2012.


Clerk