CONSULTING AND CURED-IN-PLACE PIPE CREDIT AGREEMENT

THIS CONSULTING AND CURED-IN-PLACE PIPE CREDIT AGREEMENT ("Agreement") is made and entered into as of the ____ day of June, 2024 by and between INSITUFORM TECHNOLOGIES USA, LLC, a Delaware corporation ("ITUSA"), and the COUNTY OF DUPAGE, ILLINOIS ("Consultant"), sometimes collectively "the Parties."

RECITALS

WHEREAS, Consultant issued RFP 23-065-PW on October 19, 2023, to establish a national cooperative contract for Trenchless Rehabilitation and Maintenance of Pipeline Infrastructure; and

WHEREAS, Consultant, as the Principal Procurement Agency partnered with OMNIA Partners, Public Sector ("OMNIA Partners") desires to make the contract resulting from RFP 23-065-PW (also known as the "Master Agreement" in materials distributed by OMNIA Partners) available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies"), through OMNIA Partners' cooperative purchasing program.

WHEREAS, ITUSA desires to retain Consultant as an independent contractor to render certain consulting services to ITUSA, and Consultant desires to be so retained pursuant to the terms and conditions of this Agreement.

WHEREAS, Consultant shall act as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement.

WHEREAS, ITUSA submitted a proposal in response to RFP 23-065-PW and was subsequently awarded with the contract, referred to as the Omnia Partners Agreement #23-065-PW ("Omnia Agreement").

WHEREAS, Consultant will be required to assist ITUSA in meetings, presentations, and phone calls to provide support to drive use of the Omnia Agreement and, in providing such support, Consultant will incur costs and expenses.

NOW, THEREFORE, in consideration of the mutual agreements and promises contained herein and the promises and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals:** All recitals set forth above are incorporated herein and made a part hereof, the same constituting the factual basis for this AGREEMENT. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2. **Services.** To support the promotion and use of OMNIA Agreement, Consultant shall assist ITUSA in securing projects with Public Agencies under the Omnia Agreement by engaging in, among other things, meetings, presentations and phone calls with representatives of Public Agencies as an independent contractor (the "Services"). The Services have been specially ordered and commissioned by ITUSA. The content, style, form and format of any work product of the Services shall be subject to approval by ITUSA and shall be consistent with ITUSA's standards. ITUSA's approval shall not be unreasonably withheld. Unless previously authorized in writing by ITUSA, Consultant shall have no authority to bind the ITUSA to any contract or agreement.

3. **Term and Termination of Agreement.** This Agreement shall be effective from the date first listed above until February 12, 2027, unless sooner terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is terminable by either party at any time, with or without cause, effective upon thirty (30) days written notice to the other party. If ITUSA exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that ITUSA shall be obligated to credit Consultant for work performed up to the time of termination. If Consultant exercises its

right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately.

Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination shall be effective immediately on receipt of the notice, or three (3) days from mailing of the notice, whichever occurs first. For the purposes of this section, material breach of this Agreement shall include but not be limited to the failure of Consultant to perform the Services in a commercially reasonable manner and/or within a commercially reasonable time.

This Agreement shall terminate automatically on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; or (b) sale of the business of either party.

4. Consultant's Compensation:

a. **Credit Compensation and Reimbursement.** As compensation for the Consultant's Services, ITUSA will issue Consultant a Cured-In-Place-Pipe (CIPP) material credit as described below:

b. **CIPP Credit Calculation**: Consultant will receive a credit equal to 0.5% of all revenue generated by ITUSA under contracts procured through the OMNIA Agreement with other Public Agencies located in the State of Illinois (the "CIPP Credit").

c. **Annual Cap**: The CIPP Credit shall not exceed $150,000 in any annual calendar period.

d. **Credit Communications & Information**: On the second Monday of each month, ITUSA will provide the following documents to Consultant:
   i. The previous month's sales associated with Public Agencies located in the State of Illinois under the OMNIA Agreement.
   ii. The previous month's revenue associated with Public Agencies located in the State of Illinois who have procured and paid for work under the OMNIA Agreement.
   iii. A memo accounting for all credits issued and any credits utilized by Consultant in the previous quarter.
   iv. CIPP materials cost list from ITUSA's manufacturing business for use in calculating future credits. The CIPP materials cost list is considered "Confidential Information" for purposes of Paragraph 6 below.

e. **CIPP Credit Application**: CIPP Credits will be applied to future CIPP projects procured under the OMNIA Agreement by Consultant.

f. **CIPP Credit Example**: If the City of ABC, IL piggybacks the OMNIA Agreement to perform $2,000,000 in various trenchless work, ITUSA will issue a credit memo to Consultant for $10,000 (0.5% of $2,000,000) for use towards future CIPP materials.

No other fees and/or expenses will be paid to Consultant. Consultant shall be solely responsible for any and all taxes applicable to such compensation. To the extent permitted by applicable law, Consultant shall defend, indemnify and hold harmless the ITUSA and their respective officers, directors, shareholders, employees, representatives and agents (or their equivalents) from all actions, claims, damages, demands, losses, liabilities, causes of action, costs and expenses, including attorneys' fees, of any kind arising out of or related to Consultant's failure with respect to its tax obligations in this Section 4.

5. **Independent Contractor Relationship**. The relationship of Consultant to ITUSA is that of an independent contractor. All Services shall be performed only by Consultant and Consultant's employees. Nothing contained herein or otherwise shall be construed in such manner as to create the relationship of employer/employee between Consultant, or any of Consultant's employees, and ITUSA. Neither Consultant, nor any of Consultant's employees, shall be entitled to participate in, and specifically disclaims and waives any rights to any benefit to, any benefits or benefit programs offered by ITUSA, to any employee or group of employees, including any health

insurance, disability insurance, pension, profit sharing, life insurance, vacation, incentive compensation or other benefits offered to any employee or group of employees. Consultant may represent, perform services for, or be employed by any additional persons or companies as Consultant sees fit.

5. **Personnel.** Consultant represents and warrants to ITUSA that its employees performing Services hereunder will have sufficient expertise, training and experience to accomplish the Services. Consultant agrees that Consultant is solely responsible to ensure all its personnel shall be appropriately compensated, taxes withheld, and other benefits made available as required by applicable law and regulations. To the extent permitted by applicable law, Consultant shall defend, indemnify and hold harmless the ITUSA and their respective officers, directors, shareholders, employees, representatives and agents (or their equivalents) from all actions, claims, damages, demands, losses, liabilities, causes of action, costs and expenses, including attorneys' fees, of any kind arising out of or related to Consultant's failure with respect to its obligations in this Section 5.

6. **Confidential Information**. For purposes of this Agreement, "Confidential Information" shall mean any and all proprietary information, regardless of whether kept in a document, in an electronic storage medium, or in Consultant's memory, concerning the business and operations of the ITUSA, which is disclosed or made known to Consultant in connection with the Services including any information (whether written or oral) made known to Consultant: (a) from any inspection, examination or review of the books, records, documents or files made available to Consultant by the ITUSA, (b) from communications with any officer, employee, agent or representative of the ITUSA, or (c) through disclosure or discovery in any other manner. "Confidential Information" includes but is not limited to all data, compilations, programs, devices, strategies, concepts, ideas, and methods concerning or related to:

(a) ITUSA's financial condition, results of operations, and amounts of compensation paid to officers and employees;

(b) Marketing and sales programs of ITUSA, the terms and conditions of sales and offers of sales of products or services by ITUSA, and strategic plans;

(c) The terms, conditions, and current status of ITUSA's agreements and relationships with any customers, suppliers, or other entities;

(d) The identities and business preferences of ITUSA's actual and prospective customers and suppliers or any employee or agent thereof with whom ITUSA communicates, along with ITUSA's practices and procedures for identifying prospective customers;

(e) The names and identities of any and all of ITUSA's customers, including any and all customer lists or similar compilations;

(f) The know-how, manufacturing processes and techniques, regulatory approval strategies, computer programs, data, schematics, design work, formulas, compositions, service techniques and protocols, new and existing product designs and specifications, any modifications to such product designs and specifications, and any other skills or ideas developed, accumulated, or acquired by ITUSA;

(g) Personnel information, including the productivity and profitability (or lack thereof) of ITUSA's employees, agents, or independent contractors;

(h) Any communications between ITUSA or its officers, directors, shareholders, or employees and any attorney retained by ITUSA for any purpose or any person retained or employed by such attorney for the purpose of assisting such attorney in his or her representation of ITUSA; and

(i) The cost or overhead associated with the goods and services provided by ITUSA, along with ITUSA's pricing structure for its goods or services, including its margins, discounts, volume purchases, markups, or incentives.

Notwithstanding the foregoing, Confidential Information shall not include information which was or becomes publicly known without disclosure by Consultant, or which was or is acquired by Consultant from a third party who is not in breach of any confidentiality agreement with ITUSA, nor shall it include information which is required to be disclosed by Consultant under applicable law.

As used herein, "Trade Secrets" includes certain Confidential Information and means, as provided in the Uniform Trade Secrets Act (R.S.Mo. §§ 416.450 – 417.467), information, including a formula, pattern, compilation, program, device, method, technique, or process that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Consultant acknowledges and agrees that ITUSA is engaged in a highly competitive business, and has expended or will expend significant sums of money and has invested or will invest a substantial amount of time to develop and use, and maintain the secrecy of, the Confidential Information and Trade Secrets. ITUSA has thus obtained, and will obtain, a valuable economic asset that has enabled or will enable it to develop an extensive reputation and to establish long-term business relationships with its suppliers, customers, and vendors. If such Confidential Information or Trade Secrets were disclosed to another person or entity or used for the benefit of anyone other than ITUSA, ITUSA would suffer irreparable harm, loss, and damage. Accordingly, Consultant acknowledges and agrees that:

(a) The Confidential Information and Trade Secrets are, and at all times hereafter shall remain, the sole property of ITUSA;

(b) Consultant shall use Consultant's best efforts and utmost diligence to guard and protect Confidential Information and Trade Secrets from any unauthorized disclosure to any competitor, supplier, vendor, or customer of ITUSA or any other person, firm, corporation, or other entity;

(c) Unless ITUSA gives Consultant prior express written permission, during Consultant's engagement and thereafter, Consultant shall not use for Consultant's own benefit or use for or disclose to any competitor, supplier, or customer, or any other person, firm, corporation, or other entity, the Confidential Information or Trade Secrets as set forth herein;

(d) Except in the ordinary course of ITUSA's business for ITUSA, Consultant shall not seek or accept any Confidential Information or Trade Secrets from any former, present, or future employee of ITUSA;

(e) On demand, Consultant shall within a reasonable time return to ITUSA all documentary or tangible Confidential Information and Trade Secrets in Consultant's possession, custody, or control and shall sign an affidavit under penalty of perjury that Consultant has not made or kept any copies, notes, abstracts, summaries, tapes, or other record of any type of Confidential Information or Trade Secrets;

(f) On demand, Consultant shall further within a reasonable time return to ITUSA any and all other ITUSA property in Consultant's possession, custody, or control, including, without limitation, keys, security cards, passes, phones, laptop computers, PDAs, credit cards, and marketing literature.

(g) During Consultant's engagement, Consultant shall not disclose or use for ITUSA's behalf any Trade Secrets or confidential information of any former employer or agent, and shall make no effort to reverse engineer or derive independently any information that is or could be a Trade Secret or confidential information of any former employer or agent. Consultant further represents and warrants that Consultant has provided to ITUSA copies of all nondisclosure, confidentiality and intellectual property assignment agreements that may bind Consultant.

(h) Following termination of this Agreement for any reason, Consultant shall not directly or indirectly attempt to reconstruct any Trade Secret or Confidential Information of ITUSA through the use of ITUSA's records or Consultant's memory.

Consultant shall not be held criminally or civilly liable for a disclosure of a trade secret made:

(a) in confidence, directly or indirectly, to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; or

(b) in a complaint or other document filed in a lawsuit or other proceeding, if the filing is made under seal; or

(c) in compliance with applicable Federal or State law.

7. **Possession of Property**. Consultant acknowledges the ITUSA's exclusive right to ownership, possession and title to all papers, documents, tapes, drawings, notebooks, formulas, customer lists, software, hardware, trademarks, trade names, service marks, processes, data, intellectual property, or other records, information or products provided by ITUSA or any other member of the ITUSA, or which otherwise come into Consultant's possession by reason of Consultant's engagement with ITUSA. Consultant agrees not to make or permit to be made, except in pursuit of Consultant's duties hereunder, any copies of such items. Consultant further agrees that Consultant shall deliver to ITUSA upon request all such items in Consultant's possession and without request to deliver immediately such items upon the termination, voluntarily or involuntarily, of Consultant's engagement.

8. **Continuing Obligations of Consultant**. The provisions of Sections 6 and 7 shall survive expiration or termination of this Agreement for any reason.

9. **Agency**. Consultant is not ITUSA's agent or representative and has no authority to bind or commit ITUSA or ITUSA to any agreements or other obligations.

10. **Governing Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regards to its conflict of laws principles. The Parties hereto hereby agree that all claims, actions, suits and proceedings between the Parties hereto relating to this Agreement shall be filed, tried and litigated only in the 18th Judicial Circuit Court of DuPage County, Illinois or the United States District Court for the Northern District of Illinois. In connection with the foregoing, the Parties hereto consent to the jurisdiction and venue of such courts and expressly waive any claims or defenses of lack of personal jurisdiction of or proper venue by such courts.

11. **Construction**. This Agreement shall not be construed more strictly against one party than against another party merely by virtue of the fact that this Agreement may have been physically prepared by such party, or such party's counsel, it being agreed that all parties, and their respective counsel, have mutually participated in the negotiation and preparation of this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular and *vice versa*; (b) references to any person include such person's permitted successors and assigns; (c) references to one gender include all genders; (d) "including" is not limiting; (e) "or" has the inclusive meaning represented by the phrase "and/or"; and (f) general or specific references to any law means such law.

12. **Waiver; Amendment.** The failure of any party to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder for the future performance of any such term, covenant or condition. This Agreement may only be amended by an agreement in writing signed by the party against whom enforcement is sought.

13. **Binding Effect; Assignment; Third Party Beneficiaries.** This Agreement shall be binding on the Parties and their respective heirs, successors and assigns. Consultant shall not assign this Agreement without the prior written consent of the ITUSA.

14. **Entire Agreement; Breach**. This Agreement constitutes the entire agreement of the Parties and supersedes and revokes any and all prior agreements, whether oral or written, which ITUSA may have entered into with Consultant with respect to the subject matter herein; provided, however, that this Agreement shall not supersede, revoke or affect the terms of the OMNIA Agreement. Consultant shall be liable for any breach of the

provisions of this Agreement by any director, officer, member, employee, subcontractor, affiliate or agent of Consultant.

15. **Notices**. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (a) if by hand delivery, upon receipt thereof; (b) if mailed within the United States, three (3) days after deposit in the United States mail, postage prepaid, certified mail return receipt requested; (c) if by overnight or similar third party courier service, then upon delivery thereof as confirmed by such service; (d) if by facsimile upon confirmation thereof; or (e) if by electronic mail transmission, upon electronic confirmation of receipt thereof. All notices shall be sent to the addresses set forth on the signature page hereto or such other address as a party may in the future specify in writing to the other party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day, month and year first above written.

INSITUFORM TECHNOLOGIES USA, LLC		**DUPAGE COUNTY, ILLINOIS:**
By: _____		By: _____
Name:		Name:
Title:		Title:
Address:	580 Goddard Ave. Chesterfield, MO 63005	Address:
Phone:	636.530.8000	Phone:
Fax:	636.530.8700	Email:
Email:		