

RESOLUTION R-61-07

**A RESOLUTION AUTHORIZING THE EXECUTION
OF AN ANNUAL SERVICE AGREEMENT
FOR THE TRENCHLESS RECONSTRUCTION OF CITY SEWERS
(Insituform Technologies USA)**

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous of performing on an annual basis the reconstruction of certain City sewers utilizing a trenchless, cured-in-place sewer renovation process; and

WHEREAS, City staff has received an annual service agreement proposal from Insituform Technologies USA, Inc. of Lemont, Illinois for the trenchless reconstruction of sewers; and

WHEREAS, it is necessary for the City to enter into an agreement with Insituform Technologies USA, Inc. for the proposed trenchless sewer reconstruction services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute an Annual Service Agreement between the City of Wheaton and Insituform Technologies USA, Inc. of Lemont, Illinois for the trenchless reconstruction of City sewers.

ADOPTED this 4th day of September, 2007.



Mayor

ATTEST:



City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
Councilman Prendiville
Councilman Sues
Councilwoman Corry
Councilman Johnson
Councilman Levine
Mayor Gresk

Nays: None

Absent: None

Motion Carried Unanimously

**Agreement Between the City of Wheaton, Illinois
and Insituform Technologies USA, Inc.
for Trench-less Reconstruction of Sewers**

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Insituform Technologies USA, Inc. ("Contractor"), 12897 Main Street, Lemont, IL 60439.

WITNESSETH:

Whereas, the City has determined that it is necessary to obtain the services of a contractor to perform trench-less reconstruction of City owned small diameter (8" - 15") gravity sanitary and storm sewers; and

Whereas, the Contractor did submit a proposal to the City for the work specified, which is attached hereto and incorporated herein as Exhibit A; and

Whereas, the City did on the 4th day of September, 2007 select the Contractor for the work specified in this Agreement and Exhibits.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Contractor hereto do hereby agree as follows:

1. *Scope of Services.* The Contractor shall furnish all labor, materials, and equipment to provide the City of Wheaton with trench-less reconstruction of small diameter gravity sanitary and storm sewers as described in this Agreement and attached Exhibits. The Contractor represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional contractors under similar circumstances.

2. *Compensation.* The City shall compensate the Contractor according to the terms of the Contractor's proposal and the price schedules contained within said proposal which is attached hereto as Exhibit A.

3. *Term of Agreement.* This Agreement shall commence as of the date of this Agreement and shall terminate on August 31, 2007. This Agreement may be extended or renewed annually with the same terms and conditions when agreed upon by the City and Contractor via a signed written contract extension.

4. *Additional Services.* The Contractor shall perform only those services specified in this Agreement and attached Exhibits. In the event the Contractor or the City determines that additional services are required to complete the project, such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Contractor, if not already contained in the Contractor's proposal which is attached hereto as Exhibit A.

5. *Hold Harmless and Indemnification.* The Contractor shall defend, hold harmless, and indemnify the City, its officers, agents, employees, and elected officials, in whole or in part from any loss, damage, demand, liability, cause of action, fine, judgment, or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, or contractor hired to perform any services on behalf of the Contractor.

6. *Insurance.* The Contractor and each of its agents, subcontractors, and consultants hired to perform any services provided for in this Agreement and attached Exhibits, shall purchase and maintain during the term of this Agreement, commercial general liability insurance coverage of not less than one million dollars (\$1,000,000.00) in the aggregate, worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois, commercial automobile liability insurance covering Contractor's owned, non-owned, and leased vehicles with coverage limits of not less than one million dollars (\$1,000,000.00) per accident, and umbrella or excess liability insurance coverage of not less than one million (\$1,000,000.00) per occurrence. The City shall be named as an additional insured on all insurance policies. Nothing herein set forth shall be construed to create any obligation on the part of the City to indemnify Contractor for any claims of negligence against Contractor or its agents or employees. Prior to commencement of any work under this Agreement, Contractor shall file with the City the required original certificates of insurance with endorsements, which shall clearly state all of the following:

A. The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and

B. That the City shall receive thirty (30) days written notice prior to cancellation or alterations reducing the policy limits; and

C. Contractor's insurance is primary as respects to any other valid or collectible insurance City may possess, including any self-insured retention that City may have; and

D. Any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with Contractor's insurance; and

E. All insurance carriers providing coverages under this Agreement shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide or otherwise acceptable to the City. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable; and

F. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City; and

G. The City may require increases in Contractor's insurance coverage amounts over the course of this Agreement as it deems necessary so long as it reimburses Contractor for the actual increase in Contractor's insurance premiums attributable to the City's requested increase; and

H. Where Contractor's coverage is primary, Contractor shall control the defense to the extent of its insurance limits.

7. *Compliance with Laws.* The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

8. *Termination of Contract.* If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Contractor. In the event of a termination, the City shall pay the Contractor for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

9. *Discrimination Prohibited.* The Contractor shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Contractor agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

10. *Status of Independent Contractor.* Both City and Contractor agree that Contractor will act as an Independent Contractor in the performance of duties under this agreement. Accordingly, the Independent Contractor shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Contractor's activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Contractor further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any

implied obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Contractor, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

11. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

13. *Notification.* All notification under this Agreement shall be made as follows:

If to the Contractor:
Insituform Technologies USA, Inc.
Attn: Tim Tousignant, Vice President
12897 Main Street
Lemont, IL 60439

If to the City:
City of Wheaton
Attn: Paul G. Redman, P.E.
Director of Engineering
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727

14. *Waiver.* Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

15. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

16. *Non-disclosure.* During the course of the work specified in this Agreement, Contractor may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Contractor shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

17. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the

remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

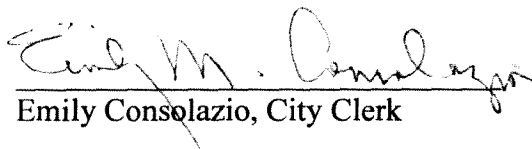
In Witness Whereof, the parties have entered into this Agreement this 4th day of September, 2007.

City of Wheaton, an Illinois municipal corporation

By


Michael J. Gresk, Mayor

Attest:


Emily Consolazio, City Clerk

Insituform Technologies USA, Inc.

By _____

Attest:

ANNUAL SERVICE AGREEMENT
Trench-less Reconstruction of Sewers

Owner:
City of Wheaton
303 W. Wesley St.
Wheaton, IL 60187
(630) 260-2069

Contractor:
Insituform Technologies USA, Inc.
12897 Main Street
Lemont, IL 60439
(630) 257-2200

August, 2007

Insituform Proposal #21070810
Small Diameter Gravity Sanitary and Storm Sewers

The City of Wheaton, Illinois (hereinafter referred to as Owner) and Insituform Technologies USA, Inc. (hereinafter referred to as Contractor) agree as follows:

- 1) Contractor will provide services to televise and renovate existing deteriorating small diameter sanitary and storm sewers for the Owner, with minimal disruption to the community and minimum impact on the surrounding environment.
- 2) The sewer renovation process shall be trench-less and cured-in-place, providing a structural pipe within the host pipe that is joint-less.
- 3) Service connections shall be reinstated internally.
- 4) The Owner shall, from time to time, identify sewer sections for inspection, evaluation, and possible renovation, via written work order to the Contractor.
- 5) The work to be performed under this Contract shall be commenced within a reasonable amount of time after Contractor's receipt of written work order.
- 6) The Contractor shall be paid for work performed in accordance with the price schedule included in this Agreement.
- 7) The term of this contract is one year(s), specifically _____, 2007 to _____.
- 8) This Contract may be renewed annually with the same terms and conditions, if mutually agreed upon by the Owner and Contractor via signed written contract extension.

CONTRACTOR SHALL PROVIDE:

- ✓ Pipeline cleaning.
- ✓ Bypass pumping.
- ✓ Installation of Insituform® complete.
- ✓ Dry weather work only.
- ✓ Standard Insurance Coverage as previously required by the Owner.
- ✓ CD of internal inspection pre and post Insituform®.
- ✓ Traffic control, as required, defined as traffic cones, flashing barricades and advanced warning signs.

EXTRAS to be negotiated if they arise:

- ❖ Point Repairs (at obstructions that cannot be removed with conventional sewer cleaning equipment).
- ❖ Weekend/Holiday Work, if required by others.
- ❖ Any toxic waste handling.
- ❖ Traffic control, defined as arrow boards and flaggers.

TO BE PROVIDED BY THE OWNER:

- ◆ Provide hydrant on job site (for 2" or 2.5" connection) for water to clean sewer and invert Insitutube™. If tanker use is required, it is an extra at \$100/hr.
- ◆ Provide dumpsite, haul permits, and associated items for sewer debris disposal.

**PRICE SCHEDULE – COST PER LINEAL FOOT
OF INSITUFORM® INSTALLED
FOR WORK ORDERS OF MORE THAN \$100,000**

	Installation Length Minimum 100'
8" diameter	
6.0 mm	\$29.00
10" diameter	
6.0 mm	\$31.00
7.5 mm	\$32.00
12" diameter	
6.0 mm	\$36.50
7.5 mm	\$38.50
9.0 mm	\$40.50
15" diameter	
7.5 mm	\$45.00
9.0 mm	\$47.00
10.5 mm	\$49.00

Notes For Price Schedule:

- a) Prices include traffic cones and/or flashing barricades for traffic control. Any additional traffic controls such as arrow boards and flaggers will be invoiced on a "cost plus" basis.
- b) Prices include light cleaning prior to installation, defined as up to 3 passes with the Jetter.
- c) Prices include internal TV inspection prior to and after installation.
- d) Prices include bypass pumping of main line flows with up to a 4" pump.

PRICE SCHEDULE – OTHER ITEMS

When Insituform® is installed and these are required:

Lateral Reinstatements.	\$125.00 each
Trim Protruding Tap inhibiting install.	\$500.00 each
Root Cutting, 8" diameter	\$3.00 per lineal foot
Root Cutting, 10" diameter	\$3.50 per lineal foot
Root Cutting, 12" diameter	\$4.00 per lineal foot
Root Cutting, 15" diameter	\$5.00 per lineal foot
Bypass pumping with 6" pump.	\$1,000.00 per set up
Installation from Easement	\$500 per installation
Arrow Boards for Traffic Control	\$65 per day
Flaggers for Traffic Control	\$45 per hour per Flagger

Notes For Price Schedule Other Items:

- a) **Heavy Cleaning is defined as root cutting and/or more than 3 passes with the Jet/Vac.**
- b) **"Installation from Easement" is defined as installation from a manhole that is in a location where a boiler or support truck cannot be parked within ten feet of the manhole or the line runs between houses causing additional bypass effort.**

General conditions:

1. Laterals that can be positively identified (with the camera) as plugged, will not be reinstated. All other laterals will be opened unless otherwise directed in writing by the owner.

2. To the extent permitted by law and in accordance with the terms of this contract, Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, and agents and employees of any of them from and against claims, damages, losses, and expenses including but not limited to attorneys' fees, arising out of or resulting from the work performed by Contractor, save and except any economic losses not related to bodily injury, sickness, disease or death, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property excluding economic loss or use thereof (other than the work itself), but only to the extent caused in whole or in part by negligent acts or omissions of Contractor, anyone directly or indirectly employed by it or anyone for whose acts Contractor may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

In claims against any person or entity indemnified under this paragraph by an employee of Contractor, anyone directly or indirectly employed by it or anyone for whose acts Contractor may be liable, the indemnification obligation under this paragraph shall be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

The obligations of Contractor under this paragraph shall not extend to the liability of the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them.

3. LIMITED WARRANTY. IN LIEU OF ALL OTHER EXPRESSED, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONTRACTOR AGREES TO CORRECT ANY DEFECTS IN THE MATERIALS OR SERVICES PROVIDED BY CONTRACTOR WHICH ARE BROUGHT TO THE ATTENTION OF CONTRACTOR WITHIN ONE YEAR FOLLOWING COMPLETION OF CONTRACTOR'S WORK, PROVIDED OWNER AFFORDS CONTRACTOR SUITABLE ACCESS AND WORKING CONDITIONS TO ACCOMPLISH SUCH CORRECTION.

4. MUTUAL RELEASE OF CONSEQUENTIAL DAMAGES. Neither party shall be liable to the other for consequential damages relating to or arising out of the Contract.

5. Any restrictions in our normal weekday work hours required by local, state, and/or federal authorities (due to noise restrictions or other reasons not known at the time of this proposal) will be an extra charge.

6. All labor, equipment, material, supervision, and mobilization necessary to complete the Insituform[®] process per the above conditions, and Insituform[®] specifications, are included.

7. PAYMENT TERMS: Payment is due in full, without exception or retention, within 35 days of date of invoice.

8. This agreement supersedes and nullifies all previous estimates, proposals, or agreements of the same number, and is valid for signatures until October 30, 2007.

Very Truly Yours,
INSITUFORM TECHNOLOGIES USA, INC.



Kevin Coburn, Business Development Manager
Cell 630-842-8539

Accepted:

CITY OF WHEATON, ILLINOIS

Signed: _____

Printed Name/Title: _____

Date: _____