UNDERGROUND FACILITIES LOCATING AND MARKING

SERVICE AGREEMENT

THIS AGREEMENT made this 1st day of January, 2022, by and between Excel Underground, LLC ("Excel Underground") and Village of Allouez ("UEZ01").

WITNESSETH:

WHEREAS, UEZ01 owns and operates underground facilities in certain areas of the State of Wisconsin; and

WHEREAS, UEZ01 desires Excel Underground to provide the labor and equipment necessary to provide certain services relative to locating and marking UEZ01's underground facilities in certain areas where UEZ01 provides service,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

1. Drawings and Scope of the Work.

Excel Underground agrees to perform locating and marking services for UEZ01 of Wisconsin's underground facilities located within ANY AREA DESIGNATED BY UEZ01, such services to be performed according to the terms and conditions contained herein.

UEZ01 agrees to provide Excel Underground with the maps and/or drawings and all updates thereto necessary to locate its underground facilities. Any such maps, digital maps, drawings, sketches, or other technical information either oral, written or otherwise furnished or disclosed to or obtained by Excel Underground in the performance of this Contract shall remain the property of UEZ01. All copies of such information shall be returned to UEZ01 upon written request or at the completion of this Contract. Unless such materials were previously known to Excel Underground free of any obligation to keep them confidential, or subsequently been made public by UEZ01, the material shall be kept confidential by Excel Underground, its agents, servants and employees, shall be used only in the performance of this Contract and may not be used for other purpose except upon such terms as may be agreed upon by UEZ01 in writing. This obligation of

confidentiality shall survive the termination of this Contract. Excel Underground shall be strictly liable to UEZ01 for any breach of this covenant by any of its agents, servants or employees.

2. Indemnification by CUSTOMER

UEZ01 shall indemnify and hold harmless Excel Underground from and against claims, losses, actions, damages (including direct, liquidated, consequential, or incidental, damages), expenses, and other liabilities, including but not limited to costs, attorney fees, and expenses of whatsoever kind or nature arising out of or resulting from UEZ01 furnishing incorrect, inaccurate or misleading records to Excel Underground or when damage is incurred as a result of an un-locatable underground facility* when said claims, losses, actions, damages, expenses and all other liabilities and attorney fees are in any manner directly or indirectly caused or occasioned by said incorrect, inaccurate or misleading records of UEZ01; provided, however, that UEZ01 shall have no obligation to indemnify and hold harmless Excel Underground for claims, losses, actions, damages, expenses, and other liabilities and attorney fees in any manner directly or indirectly caused or occasioned by the negligent or intentional acts or omissions of Excel Underground.

3. Independent Contractor.

Excel Underground hereby represents and agrees that it is engaged in an independent business; that it will perform said work as an Independent Contractor; that it has and hereby retains 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 the work; 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.

**An un-locatable underground facility which is not locatable by the normal business process used by Excel Underground in tracing underground plant.*

4. Subcontractor's Requirements.

Excel Underground shall not subcontract the work to be performed hereunder, or any part of said work unless it has first obtained the written approval of UEZ01 and UEZ01 shall have full and complete discretion in withholding or granting said approval.

5. Term of Contract.

The terms of this Contract shall remain in effect for a period of 10 months from March, 2022, thru December, 2022, unless sooner terminated by either party upon 30 days prior written notice provided by the terminating party to the non-terminating party.

6. Labor, Materials and Equipment.

Excel Underground shall furnish all labor, materials and equipment necessary to perform the obligations contained herein except for the maps and/or microfiche required to be furnished by UEZ01 in Section 1 of this Contract.

7. Permits.

Excel Underground shall obtain and comply with the provisions of all applicable permits and licenses relative to the services to be performed hereunder.

8. Indemnification by Excel Underground.

To the extent permitted by law, Excel Underground shall save and hold UEZ01 harmless from, defend and indemnify it against all claims, actions, demands, liens, fees and expenses on account thereof, for injury or damage to any person or property whatsoever, including death, which may arise out of, or result from negligent performance or the negligence, acts, or omissions by Excel Underground of the services subject to this agreement. In the case of concurring fault by contractor and/or other party, including the utility, each party shall bear its share of the loss caused by that party, including attorney's fees and other related costs.

If any person or entity threatens to sue, makes a written or oral demand or claim, sues or initiates any legal proceeding against UEZ01 on account of any provision of this indemnity

agreement, then UEZ01 shall notify Excel Underground of such pending or threatened litigation and such notification shall be made by UEZ01 no later than 30 days after UEZ01 learns of said pending litigation, lawsuit, claim or demand.

The notice to Excel Underground by UEZ01 shall be made in writing and mailed to:

Excel Underground, LLC
14 Strawberry Lane
Appleton, WI 54915

Excel Underground or its insurance carrier shall have the right to defend such proceeding by hiring legal representatives selected and chosen by Excel Underground or its insurance carrier and Excel Underground and its insurance carrier shall have the right to negotiate settlement of said claim or alleged claim. UEZ01 shall have the right to hire its own counsel at its own expenses and not to participate in any settlement, at its sole discretion.

9. Compliance with All Laws.

Excel Underground shall comply with all laws, ordinances and regulations of the United States, the State of Wisconsin, and any unit of local government asserting jurisdiction thereto, applicable to the work hereunder (including, but not limited to Workers' Compensation, Unemployment Insurance and Social Security).

10. Equal Employment.

Contractor acknowledges that it is an equal opportunity employer. No provisions or application of this Contract 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.

11. Service Charges.

Excel Underground shall charge for services rendered hereunder in the following manner:

2022	Per Locate	No Locate Required	Project Hourly
Water	$8.75	$8.75	$45.25
Sanitary	$5.25	$5.25	$45.25
Storm	$5.25	$5.25	$45.25

Any ticket which takes one hour or longer to locate and mark will be billed at the hourly project rate.

12. Contract Payments.

Excel Underground shall render invoices to UEZ01 on a monthly basis. Each invoice from Excel Underground shall be paid by UEZ01 within 30 days of the date of the invoice.

13. Amendments, Modifications and Supplements.

Written amendment, modifications and supplements to this Contract are allowed and will be binding upon UEZ01 and Excel Underground, provided they are in writing and signed by an authorized representative of both parties. The term "this Contract" as used herein shall be deemed to include any future amendments, modifications and supplements. All such amendments, modifications and supplements shall not, unless specifically referred to, be construed to adversely affect vested rights or causes of action, which have accrued prior to the effective date of such amendment, modification or supplement.

14. Entire Contract.

This Contract and any and all amendments, modifications or supplements, shall constitute the entire contract between the parties with respect to the subject matter. Both parties hereto represent they have read this Contract, agree to be bound by all terms and conditions stated herein, acknowledge receipt of a signed, true and exact copy of this Contract.

15. Excel Underground provides the following insurance coverage:

A certificate of insurance is to be provided to UEZ01 by EXCEL prior to commencement of services described in this agreement and similar proof of current coverage shall be provided to UEZ01 throughout the term of this Contract. (See Attachment)

16. Arbitration and Applicable Law. Any controversy or claim arising of or relating to this Contract, or the breach thereof, not otherwise settled by agreement of the parties, shall be submitted to arbitration in accordance with the applicable provisions of Chapter 788 of the Wisconsin Statutes and acts and laws amendatory thereof and Supplemental thereto, and such arbitration provisions of the Wisconsin Arbitration Statutes.

This Contract shall be governed in all respects, whether as to validity, construction, performance or otherwise, by the laws of the State of Wisconsin.

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

VILLAGE OF ALLOUEZ

by: _____
(Signature)

_____
(Please print)

Title: _____

EXCEL UNDERGROUND, LLC

by: _____
(Signature)

Raymond Rock
(Please print)

Title: Owner