

CITY COUNCIL AGENDA

Monday, June 17, 2024 Closed Session – 6:30 p.m. Regular Session – 7:00 p.m. Room 102

CALL TO ORDER

CLOSED SESSION PENDING LITIGATION

REGULAR SESSION ROLL CALL PRAYER PLEDGE OF ALLEGIANCE

PROCLAMATION

JUNETEENTH

PUBLIC COMMENT

(matters not on the agenda)

ALDERMEN ANNOUNCEMENTS/COMMENTS

MAYORAL ANNOUNCEMENTS/COMMENTS

CITY CLERK ANNOUNCEMENTS/COMMENTS

MANAGER'S REPORT

CITY ATTORNEY/GENERAL COUNSEL REPORT

CONSENT AGENDA

- 1. **RESOLUTION R-84-24**: Approving the Purchase of TRAINFO Railroad Sensing Equipment and Services from Traffic Control Corporation. Budgeted Funds Fire Department/Emergency Services/Professional Services and Equipment.
- 2. **RESOLUTION R-85-24**: Approving the Purchase of TRAINFO/Traffic Control Corporation Equipment Installation Services from Lyons & Pinner. Budgeted Funds – Fire Department Emergency Services/Professional Services.
- 3. **RESOLUTION R-107-24**: Approving Intergovernmental Agreements with the Des Plaines Park District and the Metropolitan Water Reclamation District of Greater Chicago Regarding the Craig Manor Stormwater Improvement Project
- 4. **RESOLUTION R-113-24:** Approving a Master Contract and Task Order No. 1 in the Amount of \$67,981.74 with Sentinel Technologies Consulting, Inc., Downers Grove, Illinois. Budgeted Funds Risk Management.
- 5. **RESOLUTION R-115-24**: Approving a Grant Budget and Agreement with the State of Illinois Department of Commerce and Economic Opportunity (DCEO) for Sidewalk Installation on Algonquin Road from Elmhurst Road to Mt. Prospect Road
- 6. **RESOLUTION R-116-24**: Approving a Grant Budget and Agreement with the State of Illinois Department of Commerce and Economic Opportunity (DCEO) for Stormwater Drainage Improvements at Various Locations
- 7. **RESOLUTION R-117-24**: Approving an Agreement with Tyler Technologies, Inc., Yarmouth, Maine in the Amount of \$224,844 for the Migration of On-Premises Enterprise Resource Planning (ERP) System to a Hosted Cloud-Based Environment or Software as a Service (SaaS) Technology. Budgeted Funds Information Technology/R&M Software.
- 8. **SECOND READING ORDINANCE Z-10-24**: Consideration of an Ordinance Granting an Amendment to an Existing Conditional Use Permit to Allow Motor Vehicle Sales and a Trade Contractor Use Located at 1628 Rand Road, Des Plaines, Illinois
- 9. **RESOLUTION R-120-24**: Consenting to and Authorizing Filing of Property Tax Appeal for the Des Plaines Theatre and Associated Leased Premises
- 10. Minutes/Regular Meeting June 3, 2024
- 11. Minutes/Closed Session June 3, 2024

APPOINTMENTS/RE-APPOINTMENTS

PLANNING & ZONING BOARD

Dominik Bronakowski – Term to Expire 7/15/27

UNFINISHED BUSINESS

n/a

NEW BUSINESS

- 1. <u>FINANCE & ADMINISTRATION</u> Alderman Dick Sayad, Chair
 - a. Warrant Register in the Amount of \$3,108,111.96 **RESOLUTION R-118-24**
 - b. Consideration of Amendments to the City's Purchasing Policy Regarding Department Head Purchasing Authority and Department Head and City Manager Change Order Authority – RESOLUTION R-119-24
- 2. <u>COMMUNITY DEVELOPMENT</u> Alderman Colt Moylan, Chair
 - a. Consideration of Zoning Text Amendments Regarding Equipment Rental and Leasing **FIRST READING – ORDINANCE Z-11-24**
 - b. Consideration of Zoning Text Amendments Regarding the I-1 Institutional Zoning District **FIRST READING – ORDINANCE Z-12-24**
 - c. Approving a Subdivision Performance Security and Public Improvement Agreement and Covenant for Lot 2 in the Bonk Subdivision, 2289 Webster Lane **RESOLUTION R-121-24**
 - d. Consideration of an Additional Extension and Amendments to a Temporary Abeyance of Enforcement for Commercial Parking at 3001 Mannheim Road (Holiday Inn Express & Suites, Orchards at O'Hare)
 RESOLUTION R-122-24
- 3. <u>LEGAL & LICENSING</u> Alderman Carla Brookman, Chair
 - a. Discussion Regarding Beekeeping

OTHER MAYOR/ALDERMEN COMMENTS FOR THE GOOD OF THE ORDER

ADJOURNMENT

ORDINANCES ON THE AGENDA FOR FIRST READING APPROVAL MAY ALSO, AT THE COUNCIL'S DISCRETION, BE ADOPTED FOR FINAL PASSAGE AT THE SAME MEETING.

<u>City of Des Plaines, in compliance with the Americans With Disabilities Act, requests that persons with disabilities, who require certain accommodations to allow them to observe and/or participate in the meeting(s) or have questions about the accessibility of the meeting(s) or facilities, contact the ADA Coordinator at 391-5486 to allow the City to make reasonable accommodations for these persons.</u>

PLAINES ILLINOIS

OFFICE OF THE MAYOR

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5301 desplaines.org

MEMORANDUM

Date: June 3, 2024

To: Aldermen

From: Andrew Goczkowski, Mayor 46.

Cc: Dorothy Wisniewski, City Manager

Subject: Proclamation

At the beginning of the June 17, 2024 City Council Meeting, we will be issuing a Proclamation recognizing Juneteenth Day.

OFFICE OF THE MAYOR

CITY OF

DES PLAINES, ILLINOIS

WHEREAS, each June, we undergo a time of reflection and family reunion, to commemorate the freeing of formerly enslaved individuals in the United States; and WHEREAS. we reflect on both bondage and freedom - we recognize the extraordinary capacity to heal, hope, and emerge stronger; and WHEREAS. the City of Des Plaines is proud to join our country in recognizing Juneteenth to remember the sacrifice of all enslaved people who fought for their freedom, and all the individuals who used their freedom to fight to end slavery; and WHEREAS, we acknowledge the contributions of African Americans to the City of Des Plaines and encourage residents to learn from our history, celebrate our progress, and engage in the work that continues.

Now, therefore, I, ANDREW GOCZKOWSKI, MAYOR OF THE CITY OF DES PLAINES, do hereby proclaim June 19, 2024 as

JUNETEENTH DAY

Dated this 17th day of June, 2024

Andrew Goczkowski, Mayor

DES PLAINES

FIRE DEPARTMENT

405 S. River St Des Plaines, IL 60016 P: 847.391.5333 desplaines.org

MEMORANDUM

Date:May 30, 2024To:Dorothy Wisniewski, City ManagerFrom:Matthew Matzl, Fire Chief MMSubject:Purchase of Railroad Crossing Sensing Equipment

Issue: The Fire Department seeks to purchase services and equipment that will detect and determine when specific rail crossings are blocked by trains. The purchase of these services and equipment will allow personnel to see on a map whether rail crossings are blocked or expected to be blocked in order to determine if an alternative route is necessary.

Analysis: The Fire Department staff has identified a resource that has developed, tested, implemented, and has had success in determining rail crossing obstructions. Over the last three years, our staff has reviewed numerous potential technologies that have the potential to assist in determining rail crossing obstructions. However, either the technology or applicability of the products were not feasible or affordable.

The Fire Department staff has identified TRAINFO as having developed technology that has been tested and is in operation in several municipalities or counties in the United States and Canada. TRAINFO technology uses sound detection that can identify the rail crossing warning signal (bell), which activates when the crossing signals are activated. The system, powered by a pole-mounted solar panel and power storage, sends a signal through cellular technology to the TRAINFO system in real time, and is then transferred to a live map view.

Traffic Control Corporation is the sole distributor of TRAINFO equipment. Installation of the equipment will be handled by a separate contractor, which will be addressed in another memorandum and agenda item.

Recommendation: I recommend the City Council approve the purchase of equipment and services to provide rail crossing blockage detection at four outer belt crossings and one Metra line crossing from Traffic Control Corporation in the amount of \$91,670 plus a \$3,000 contingency, for a not-to-exceed amount of \$94,670.00. This purchase will come from budgeted funds in the Fire Department Emergency Services accounts 100-70-710-0000.6000 and 100-70-710-0000.8015.

Attachments:

Attachment 1 – Traffic Control Corporation Quotation Attachment 2 – TRAINFO Sensor Sketch Resolution R-84-24

TRAFFIC CONTROL
CORPORATION 10435 ARGONNE WOODS DRIVE WOODRIDGE, IL 60517 P: 630-543-1300 F: 630-543-5050

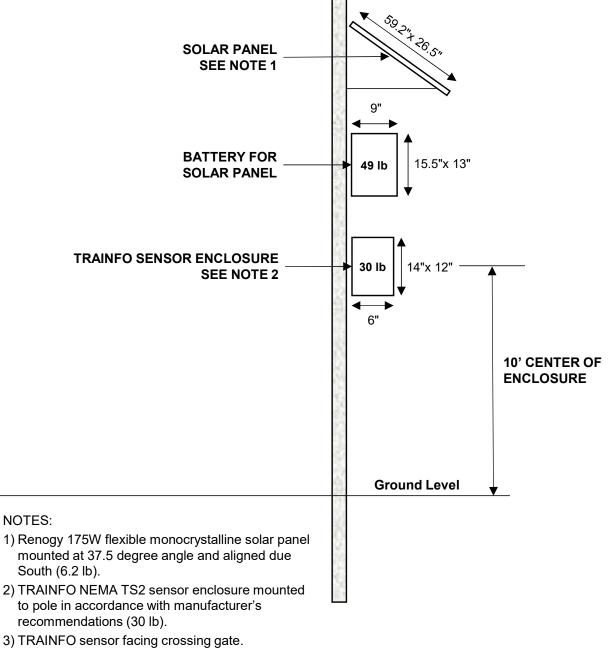


Number 655939

Page: 1 of 1

To: 12034 DESPLAINES FIRE DEPARTMENT 405 S DESPLAINES RIVER ROAD DESPLAINES IL 60016 USA Attn: Email: Phone: 847-391-5339 Fax: 847-391-5649		BASED ON APPF ATION-FRT CHA BRIGHT CC1.com	
Letting Date: Location: CITY OF DES PLAINES Book / Call / Item: Description: TRAINFO TRAIN DETECTION WARNING SYSTEM Contract No: Description: TRAINFO TRAIN DETECTION WARNING SYSTEM			
MATERIAL ONLY - NO INSTALLATION INCLUDED			
Part Number / Description	Unit Price	Qty/UM	Net Price
TRAINFO Sensor-Solar SOLAR POWERED TRAINFO SENSOR (5)	49,975.00	1.00 EA	49,975.00
TRAINFO DATA TRAINFO DATA PLAN, ANNUAL FEE TRAINFO DATA PLAN FOR 5 SENSORS	3,000.00	1.00 EA	3,000.00
LICENSE COUNTY LICENSE TIER 2 (5 -SENSORS) AN	18,000.00 INUAL FEE	1.00 EA	18,000.00
POST WITH HELIX INCLUDES, 17' GALVANIZED PIPE, GALVAN GALVANIZED BOLTS, 4 TRAPEZOIDAL WAS FOUNDATION WITH 8" BODY, GALVANIZED GALVANIZED BOLTS	HERS, (1) 5 FOOT HELIX	5.00 EA	13,395.00
MANAGEMENT PROJECT MANAGEMENT	4,500.00	1.00 EA	4,500.00
SHIPPING SHIPPING CHARGES	2,800.00	1.00 EA	2,800.00
	Item Total: Misc Charges and Adjustments:		91,670.00 0.00
	Quote Total:		91,670.00

Pricing does not include applicable sales taxes. If order is to be exempt sales tax, documentation must be provided at time of order. Additional terms may apply. Review our full Terms & Conditions of Sale at www.trafficcontrolcorp.com.



4) Pole shall be mounted within 100' of crossing gate and within public right-of-way.



CITY OF DES PLAINES

RESOLUTION R - 84 - 24

A RESOLUTION APPROVING THE PURCHASE OF TRAINFO RAILROAD SENSING EQUIPMENT AND SERVICES FROM TRAFFIC CONTROL CORPORATION.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Des Plaines Fire Department ("Fire Department") has identified the need to procure railroad sensing equipment and services ("Equipment & Services"); and

WHEREAS, Traffic Control Corporation (*"Vendor"*) submitted a quote to provide the Equipment & Services in the amount of \$94,670, which will be installed by a third party; and

WHEREAS, the City has sufficient funds in the Fire Department's General Fund and the Fire Department's Emergency Services budget within the General Fund for the purchase of the Equipment and Services; and

WHEREAS, the Vendor is the sole distributor of the Equipment and Services; and

WHEREAS, the City Council has determined that it is in the best interest of the City to waive the competitive bidding requirements and purchase the Equipment and Services from the Vendor in accordance with the Resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

<u>SECTION 1</u>: <u>**RECITALS**</u>. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: <u>APPROVAL OF PURCHASE</u>. The City Council hereby approves the purchase of the Equipment and Services from the Vendor in a total not-to-exceed amount of \$94,670.

SECTION 3: <u>AUTHORIZATION TO PURCHASE</u>. The City Manager and the City Clerk are authorized and directed to execute and seal documents approved by the General Counsel, and the City Manager to make payments, on behalf of the City, that are necessary to complete the purchase of the Equipment and Services from the Vendor in a total not-to-exceed amount of \$94,670.00.

<u>SECTION 4</u>: <u>EFFECTIVE DATE</u>. This Resolution shall be in full force and effect from and after its passage and approval according to law.

[SIGNATURE PAGE FOLLOWS]

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Resolution Approving Purchase of Railroad Sensing Equipment & Services

DES PLAINES

FIRE DEPARTMENT

405 S. River St Des Plaines, IL 60016 P: 847.391.5333 desplaines.org

MEMORANDUM

Date: May 30, 2024

To: Dorothy Wisniewski, City Manager

From: Matthew Matzl, Fire Chief MM

Subject: Installation Services of TRAINFO Railroad Crossing Sensing Equipment

Issue: The Fire Department seeks approval of services to install the TRAINFO equipment that will detect and determine when specific rail crossings are blocked by trains. The purchase of the services to install the TRAINFO equipment at specific rail crossings is requested as TRAINFO/Traffic Control Corporation only provides the equipment and technology for the system.

Analysis: Fire Department staff sent out requests for proposals for the installation services to multiple contractors. The request was to provide costs for the installation of materials provided by the City as determined by TRAINFO and Traffic Control Corporation. The equipment and services purchase is covered in a separate communication and request.

Quotations for the installation of the equipment were received from three contractors who specialize in public utility installation services.

H&H Electric Company	\$55,361.70
MEADE	\$33,378.21
Lyons & Pinner	\$28,650.00

Lyons & Pinner has submitted the lowest acceptable quotation for the installation of the equipment necessary to complete the TRAINFO Rail Crossing Sensor Project.

Site visits and details of each installation location have been reviewed; however, each installation location has different obstacles, and there is always the potential for minor adjustments to the installation location or equipment. Therefore, I request a contingency for the installation services of \$3,000.

Recommendation: I recommend the City Council approve the purchase of installation services of the TRAINFO/Traffic Control Corporation Equipment at four outer belt crossings and one Metra line crossing from Lyons & Pinner in the amount of \$28,650 plus a \$3,000 contingency for a not-to-exceed amount of \$31,650.00. This purchase will come from budgeted funds in the Fire Department Emergency Services account 100-70-710-0000.6000.

Attachments: Attachment 1 – H&H Electric Company Quotation Attachment 2 – MEADE Quotation Attachment 3 – RFP & Lyons Contract Resolution R-85-24

- 0 -					
_ 67 _	2830 COMMERCE STREET,				
	FRANKLIN PARK, ILLINOIS 60131-2927				
ELECTRIC COMPANY	OFFICE PHONE: (708) 453-2222 / FACSIMILE: (708) 453-2851.				
H&H JOB #:	N/A				
IDOT ITEM #:	N/A				
DBE %:	0.00%				
ADDENDUM:	N/A				
LOCATION / DESCRIPTION:	CITY OF DES PLAINES - RAILROAD CROSSING - INSTALL TRAINFO SENSOR EQUIPMENT AT (5) LOCATIONS THROUGHOUT THE CITY.				
CONTRACT #:	N/A				
COUNTY:	СООК				
SECTION #:	N/A				
ROUTE:	VARIOUS				
DATE:	Friday, March 8, 2024				
BID AS:	GENERAL ELECTRICAL CONTRACTOR				
BID DUE DATE:	N/A				
BID DUE TIME:	N/A				
BID LOCATION:	EMAIL TO FIRE CHIEF DANIEL ANDERSON AT THE DES PLAINES FIRE DEPARTMENT - <u>danderson@desplaines.org</u>				
DUE TO OWNER (DATE):	N/A				
DUE TO OWNER (TIME):	N/A				
COMPLETION:	TO BE DETERMINED				
		ω			
		OF MEASURE	Ω υ ΑΝΤΙΤΥ	PRICE	TOTAL PRICE
ITEM NUMBER	PAY ITEM DESCRIPTION		QUAN	UNIT	τοτα

ITEM NUMBER	PAY ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	TOTAL PRICE
1	INSTALL ONLY - TRAINFO/TCC EQUIPMENT PROVIDED BY THE CITY. H&H WILL PROVIDE STAINLESS STEEL BANDING, STAINLESS STEEL BUCKLES, AND SPLICING MATERIAL. THE REST OF THE MATERIALS ARE TO BE PROVIDED BY THE CITY.	EACH	5.000	11,072.34	55,361.70
TOTALS					55,361.70
NOTES:					
1	THIS BID PROPOSAL IS SUBMITTED AND MUST BE KEPT CONFIDENTIAL EXCEPT FOR DISCLOSURES REQUIRED BY LAW.				
2	THIS PROPOSAL IS BASED ON NORMAL WORKING HOURS.				
3	ANY ADDITIONAL ASSISTANCE PROVIDED FOR AIMING AND ACTIVIATION WILL BE CHARGED AT H&H'S T&M RATES.				
NOT INCLUDED IN TH	IS PROPOSAL:				
1	ALL FINAL LANDSCAPE RESTORATION. ANY EXCEPTIONS ARE NOTED ABOVE.				
2	SPECIAL INSURANCE, FEES, OR PERMITS OF ANY TYPE INCLUDING RAILROAD INSURANCE.				
3	BONDS, ALTHOUGH WE ARE BONDABLE.				
4	NO WORK WILL BE DONE OTHER THAN THE ITEMS ON OUR BID WITHOUT WRITTEN APPROVAL.				
5	PROJECT LAYOUT INCLUDING GRADES AND ELEVATIONS.				
6	ANY AND ALL COSTS CONTRIBUTABLE TO TESTING, DOCUMENTATION, REMOVAL AND/OR DISPOSAL OF ANY SPOILS.				
7	ANY MAJOR SUBSURFACE OBSTACLES ENCOUNTERED WHICH CAUSES A DECREASE IN OUR PRODUCTION SHALL BE COMPENSATED AT TIME & MATERIAL RATES.				
8	TRAFFIC CONTROL & PROTECTION.				
9	HARD SURFACE REMOVAL & REPLACEMENT.				
10	ROCK EXCAVATION.				
11	PROPOSAL VALID FOR <u>60</u> DAYS.				



March 14, 2024

Des Plaines Fire Department 14200 Miner Street Des Plaines, IL 60016

Attn: Daniel E. Anderson

Re: Rail Crossing Sensors

Mr. Anderson,

Meade, Inc. is pleased to provide the Des Plaines Fire Department with a proposal to install (5) TRAIFO Train Detection Warning Systems in the City of Des Plaines. Our proposal is as follows:

Lumps Sum for 5 Installations - \$33,378.21

Scope:

- Install (5) Helix Foundations
- Install (17) Galvanized Steel Posts on a Galvanized Base
- Install (5) Solar Panes
- Install (5) Batteries
- Install (5) Traffic Sensor Enclosure on Post

Qualifications:

- All Material is provided by Des Plaines
- All Permits will be provided by Des Plaines
- Meade is responsible for the Permit Bond
- All Material to be in one location to be picked up in Des Plaines

Thank you,

Bryan Knutson Project Manger



REQUEST FOR PROPOSAL/QUOTE

Date:	March 6, 2024
То:	Traffic Signal/Street Light Installation Contractor
From:	Daniel Anderson, Fire Chief
Subject:	Request for Proposal/Quote for Railroad Sensor Equipment

The City of Des Plaines Fire Department is seeking quotes for the installation of five (5) TRAINFO Train Detection Warning Systems. The installation of these devices will be in the public right of way at five railroad grade crossings in Des Plaines with material provided by City.

The installation of the devices will be at the following locations:

- Howard Avenue and the Union Pacific rail crossing (City ROW)
- Dempster/Thacker and the Union Pacific rail crossing (Cook County ROW)
- Wolf Road and the Union Pacific rail crossing (IDOT ROW)
- **Either** Rand Road or Des Plaines River Road and the Union Pacific rail crossing (IDOT ROW)
- Graceland Avenue at Miner Street and the UP-NW/Metra rail crossing (IDOT ROW)

The specific location is TBD based upon design but will be within 100' of the bells on the rail crossing warning system.

The following material for the installation shall be provided by the City through TRAINFO and Traffic Control Corporation (TCC) at each location and will include:

- 17' GALVANIZED PIPE
- GALVANIZED BASE
- (4) 1" X 4" GALVANIZED BOLTS
- 4 TRAPEZOIDAL WASHERS
- (1) 5 FOOT HELIX FOUNDATION WITH 8" BODY GALVANIZED
- (4) 1" X 4" GALVANIZED BOLTS
- 1 Solar Panel
- 1 Battery for Solar Panel
- 1 Traffic Sensor Enclosure

Permits, where applicable, will be obtained by the City. Contractor will be responsible for highway permit bonds.

Installation timeline preferred in Q2 or early Q3 of 2024 dependent upon material shipment and acquisition of necessary permits.

The selected contractor will be expected to enter into the attached short form contract with the City.

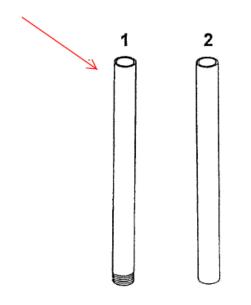
See attached documents for further information or description.

The TrainFo/Traffic Control Corporation representative is Mitch Bright (<u>MB@TCC1.com</u>).

Questions can be directed to <u>danderson@desplaines.org</u> or at 847-391-5336.

Proposals are requested via email by end of business on March 22, 2024.

SPECIFICATIONS GALVANIZED TRAFFIC SIGNAL POLES

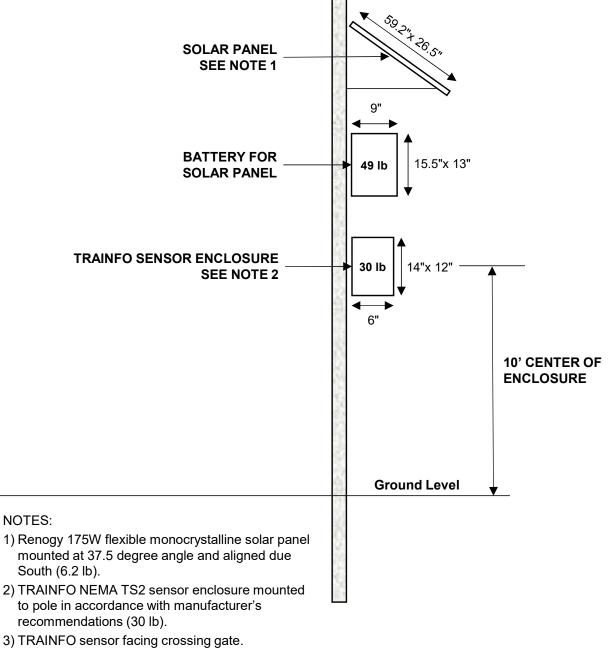


> 1. THREADED POLE

GALVANIZED CARBON STEEL POLES PER ASTM A-53 4-1/2" OD .237 WALL SCH40 10.79 LB/FT THREADED ON ONE END. ALL GALVANIZED STEEL POLES ARE DOMESTICALLY MANUFACTURED AND FABRICATED. HOT DIP GALVANIZED PER ASTM A-123 (AASHTO M111).

2. PLAIN POLE

ALL DIMENSIONS AND SPECIFICATIONS SAME AS #1 - NO THREADS



4) Pole shall be mounted within 100' of crossing gate and within public right-of-way.





Attachment 3

Page 10 of 21

CITY OF DES PLAINES

CONTRACT FOR

NAME OF WORK

Full Name of Bidder	Lyons Electric Company	, Inc		("Bidder")
Principal Office Address	650 E. Elm Avenue La G	range, IL 60525		
Local Office Address	650 E. Elm Avenue La G	range, IL 60525		
Contact Person	Bob Schaeffer	_ Telephone Number	708-588-6844	

TO: City of Des Plaines ("Owner") 1420 Miner Street Des Plaines, Illinois 60016 Attention: Daniel E. Anderson

Bidder warrants and represents that Bidder has carefully examined the Work Site described below and its environs and has reviewed and understood all documents included, referred to, or mentioned in this bound set of documents, including Addenda Nos. <u>NONE</u> [if none, write "NONE"], which are securely stapled to the end of this Contract.

1. Work Proposal

A. <u>Contract and Work</u>. If this Contract is accepted, Bidder proposes and agrees that Bidder shall, at its sole cost and expense, provide, perform, and complete, in the manner specified and described, and upon the terms and conditions set forth, in this Contract and Owner's written notification of acceptance in the form included in this bound set of documents, all of the following, all of which is herein referred to as the "Work":

- Labor, Equipment, Materials and Supplies. Provide, perform, and complete, in the manner specified and described in this Contract/Proposal, all necessary work, labor, services, transportation, equipment, materials, supplies, information, data, and other means and items necessary for the [describe Work] located at [described Work Site] (the "Work Site");
- 2. <u>Permits</u>. Procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith;
- <u>Bonds and Insurance</u>. Procure and furnish all bonds and all insurance certificates and policies of insurance specified in this Contract;
- 4. <u>Taxes</u>. Pay all applicable federal, state, and local taxes;
- 5. <u>Miscellaneous</u>. Do all other things required of Bidder by this Contract; and
- Quality. Provide, perform, and complete all of the foregoing in a proper and workmanlike manner, consistent with highest standards of professional and construction practices, in full compliance with, and as required by or pursuant, to this Contract, and with the

greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged, and first quality equipment, materials, and supplies.

B. Performance Standards. If this Contract is accepted, Bidder proposes and agrees that all Work shall be fully provided, performed, and completed in accordance with the [following specifications:] [the specifications attached hereto and by this reference made a part of this Contract.] No provision of any referenced standard, specification, manual or code shall change the duties and responsibilities of Owner or Bidder from those set forth in this Contract. Whenever any equipment, materials, or supplies are specified or described in this Contract by using the name or other identifying feature of a proprietary product or the name or other identifying feature of a particular manufacturer or vendor, the specific item mentioned shall be understood as establishing the type, function, and quality desired. Other manufacturers' or vendors' products may be accepted, provided that the products proposed are equivalent in substance and function to those named as determined by Owner in its sole and absolute discretion.

C. <u>Responsibility for Damage or Loss</u>. If this Contract is accepted, Bidder proposes and agrees that Bidder shall be responsible and liable for, and shall promptly and without charge to Owner repair or replace, damage done to, and any loss or injury suffered by, Owner, the Work, the Work Site, or other property or persons as a result of the Work.

D. <u>Inspection/Testing/Rejection</u>. Owner shall have the right to inspect all or any part of the Work and to reject all or any part of the Work that is, in Owner's judgment, defective or damaged or that in any way fails to conform strictly to the requirements of this Contract and Owner, without limiting its other rights or remedies, may require correction or replacement at Bidder's cost, perform or have performed all Work necessary to complete or correct all or any part of the Work that is defective, damaged, or nonconforming and charge Bidder with any excess cost incurred thereby, or cancel all or any part of any order or this Contract. Work so rejected may be returned or held at Bidder's expense and risk.

2. Contract Price Proposal

If this Contract is accepted, Bidder proposes, and agrees, that Bidder shall take in full payment for all Work and other matters set forth under Section 1 above, including overhead and profit; taxes, contributions, and premiums; and compensation to all subcontractors and suppliers, the compensation set forth below.

A. <u>Schedule of Prices</u>. For providing, performing, and completing all Work, the total Base Bid contract price of:

TOTAL CONTRACT PRICE (in numbers):

\$<u>28,650.00</u>

B. <u>Basis for Determining Prices</u>. It is expressly understood and agreed that:

1. All prices stated in the Schedule of Prices are firm and shall not be subject to escalation or change;

2. Owner is not subject to state or local sales, use, and excise taxes, that no such taxes are included in the Schedule of Prices, and that all claim or right to claim any additional compensation by reason of the payment of any such tax is hereby waived and released; and

3. All other applicable federal, state, and local taxes of every kind and nature applicable to the Work are included in the Schedule of Prices; and

4. The approximate quantities set forth in the Schedule of Prices for each Unit Price Item are Owner's estimate only, that Owner reserves the right to increase or decrease such quantities, that payment for each Unit Price Item shall be made only on the actual number of acceptable units of such Unit Price Item installed complete in place in full compliance with this Contract/Proposal, and that all claim or right to dispute or complain of any such estimated quantity, or to assert that there was any misunderstanding in regard to the nature or amount of any Unit Price Item to be provided or performed, is hereby waived and released; and

5. Any items of Work not specifically listed or referred to in the Schedule of Prices, or not specifically included for payment under any Unit Price Item, shall be deemed incidental to the Contract Price, shall not be measured for payment, and shall not be paid for separately except as incidental to the Contract Price, including without limitation extraordinary equipment repair, the cost of transportation, packing, cartage, and containers, the cost of preparing schedules and submittals, the cost or rental of small tools or buildings, the cost of utilities and sanitary conveniences, and any portion of the time of Bidder, its superintendents, or its office and engineering staff.

C. <u>Time of Payment</u>. It is expressly understood and agreed that all payments shall be made in accordance with the following schedule:

Bidder will invoice Owner for all Work completed, and Owner will pay Bidder all undisputed amounts no later than 45 days after receipt by Owner of each invoice. All payments may be subject to deduction or setoff by reason of any failure of Bidder to perform under this Contract/Proposal. Each payment shall include Bidder's certification of the value of, and partial or final waivers of lien covering, all Work for which payment is then requested and Bidder's certification that all prior payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.

3. Contract Time

If this Contract is accepted, Bidder proposes and agrees that Bidder shall commence the Work April 1, 2024 (weather permitting) after Owner's acceptance of the Contract provided Bidder shall have furnished to Owner all bonds and all insurance certificates and policies of insurance specified in this Contract (the "Commencement Date"). If this Contract is accepted, Bidder proposes and agrees that Bidder shall perform the Work ; [not later than DATE CERTAIN] [within __ days after the Commencement Date].

Owner may terminate this Contract/Proposal at its convenience by providing Bidder 30 days advance written notice thereof. At all times during the Term and any Renewal Term, Bidder proposes and agrees that Bidder shall perform the Work diligently and continuously and shall complete the Work in accordance with this Contract/Proposal, as directed by Owner, and more fully described in Attachment A.

If<u>, at any time during the term of the Contract, the Owner</u> <u>determines that</u> the Work is not <u>being</u> completed by Bidder in full compliance with specifications and as required by or pursuant to this Contract, then Owner may, <u>after providing</u> <u>Bidder with notice of such deficiency in performance and</u> <u>providing Bidder with one (1) business days to cure such</u> <u>deficiency</u>, invoke its remedies under this Contract or may, in Owner's sole and absolute discretion, permit Bidder to complete the Work but charge to Bidder, and deduct from any payments to Bidder under this Contract, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the Completion Date, computed on the basis of the following per diem administrative charge, as well as any additional damages caused by such delay:

Per Diem Administrative Charge:

\$ 250.00 per day/occurrence

<u>A second occurrence of a specific deficiency in</u> <u>performance shall automatically trigger Bidder's obligation</u> to pay the Per Diem Administrative Charge. Any Per Diem <u>Administrative Charges assessed against Bidder will be</u> deducted from any funds owed by Owner to Bidder.

4. Financial Assurance

A. <u>Bonds</u>. If this Contract is accepted, Bidder proposes and agrees that Bidder shall provide a Performance Bond and a Labor and Material Payment Bond, on forms provided by, or otherwise acceptable to, Owner, from a surety company acceptable to Owner, each in the penal sum of the Contract Price, within 10 days after Owner's acceptance of this Contract.

B. Insurance. If this Contract is accepted, Bidder proposes and agrees that Bidder shall provide certificates and policies of insurance evidencing the minimum insurance coverage and limits set forth below within 10 days after Owner's acceptance of this Contract. Such insurance shall be in form, and from companies, acceptable to Owner and shall name Owner, including its Council members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives, as an Additional Insured. The insurance coverage and limits set forth below shall be deemed to be minimum coverage and limits and shall not be construed in any way as a limitation on Bidder's duty to carry adequate insurance or on Bidder's liability for losses or damages under this Contract. The minimum insurance coverage and limits that shall be maintained at all times while providing, performing, or completing the Work are as follows:

1. Workers' Compensation and Employer's Liability

Limits shall not be less than:

Worker's Compensation: Statutory

Employer's Liability: \$500,000 each accident-injury; \$500,000 each employee-disease; \$500,000 disease-policy.

Such insurance shall evidence that coverage applies to the State of Illinois and provide a waiver of subrogation in favor of Owner.

2. Commercial Motor Vehicle Liability

Limits for vehicles owned, non-owned or rented shall not be less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit

3. Commercial General Liability

Limits shall not be less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

Coverage is to be written on an "occurrence" basis. Coverage to include:

- Premises Operations
- Products/Completed Operations
- Independent Contractors
- Personal Injury (with Employment Exclusion deleted)
- Broad Form Property Damage Endorsement
- "X," "C," and "U"
- Contractual Liability

Contractual Liability coverage shall specifically include the indemnification set forth below.

4. Umbrella Liability

Limits shall not be less than:

\$2,000,000 Bodily Injury and Property Damage Combined Single Limit.

This Coverage shall apply in excess of the limits stated in 1, 2, and 3 above.

C. Indemnification. If this Contract is accepted, Bidder proposes and agrees that Bidder shall indemnify, save harmless, and defend Owner against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with Bidder's performance of, or failure to perform, the Work or any part thereof, or any failure to meet the representations and warranties set forth in Section 6 of this Contract.

D. <u>Penalties</u>. If this Contract is accepted, Bidder proposes and agrees that Bidder 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 Bidder's performance of, or failure to perform, the Work or any part thereof.

5. Firm Contract

All prices and other terms stated in this Contract are firm and shall not be subject to withdrawal, escalation, or change provided Owner accepts this Contract within 45 days after the date the bidder's contract proposal is opened.

6. Bidder's Representations and Warranties

To induce Owner to accept this Contract, Bidder hereby represents and warrants as follows:

A. The Work. The Work, and all of its components, (1) shall be of merchantable quality; (2) shall be free from any latent or patent defects and flaws in workmanship, materials, and design; (3) shall strictly conform to the requirements of this Contract, including without limitation the performance standards set forth in Section 1B of this Contract; and (4) shall be fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Contract and the warranties expressed herein shall be in addition to any other warranties expressed or implied by law, which are hereby reserved unto Owner. If this Contract is accepted, Bidder proposes and agrees that as part of Bidder's warranty obligations under this Contract, shall provide, perform, and complete all post-installation service, maintenance, and inspection for a period of 2 years after installation. Bidder, promptly and without charge, shall correct any failure to fulfill the above warranty at any time within one year after final payment or such longer period as may be prescribed in the performance standards set forth in Section 1B of this Contract or by law. The above warranty shall be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and Bidder's obligation to correct Work shall be extended for a period of two years from the date of such repair or replacement. The time period established in this Section 6A relates only to the specific obligation of Bidder to correct Work and shall not be construed to establish a period of limitation with respect to other obligations that Bidder has under this Contract..

B. <u>Compliance with Laws</u>. The Work, and all of its components, shall be provided, performed, and completed in compliance with, and Bidder agrees to be bound by, all applicable federal, state, and local laws, orders, rules, and

regulations, as they may be modified or amended from time to time, including without limitation the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 <u>et seq</u>. and any other prevailing wage laws; any statutes requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 <u>et seq</u>.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification; and any statutes regarding safety or the performance of the Work.

C. <u>Prevailing Wage Act</u>. This Contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 <u>et seq</u>. (the "Act"). If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid, the revised rate will apply to this Contract. Bidder and any subcontractors rendering services under this Contract must comply with all requirements of the Act, including but not limited to, all wage, notice, and record-keeping duties and certified payrolls.

Bidder is not barred by law from D. Not Barred. contracting with Owner or with any other unit of state or local government as a result of (i) a violation of either Section 33E-3 or Section 33E-4 of Article 33 of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; or (ii) a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) (the "Patriot Act") or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001. Bidder is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and Bidder is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation.

Bidder has the requisite experience E. Qualified. minimum of 5 years, ability, capital, facilities, plant, organization, and staff to enable Bidder to perform the Work successfully and promptly and to commence and complete the Work within the Contract Price and Contract Time set forth above. Bidder warrants and represents that it has met and will meet all required standards set forth in Owner's Responsible Bidder Ordinance M-7-20, including, without limitation, The bidder actively participates, and has actively participated for at least 12 months before the date of the bid opening, in apprenticeship and training programs approved and registered with the United States department of labor bureau of apprenticeship and training for each of the trades of work contemplated under the awarded contract for all bidders and subcontractors. For the purposes of this subsection, a bidder or subcontractor is considered an active participant in an apprenticeship and training program if all eligible employees have either: (i) completed such a program, or (ii) were enrolled in such a program prior to the solicitation date and are currently participating in such program." performing Work under this Contract.

7. Acknowledgements

In submitting this Contract, Bidder acknowledges and agrees that:

A. <u>Reliance</u>. Owner is relying on all warranties, representations, and statements made by Bidder in this Contract.

B. <u>Reservation of Rights</u>. Owner reserves the right to reject any and all proposals, reserves the right to reject the low price proposal, and reserves such other rights as are set forth in the Instructions to Bidders.

C. <u>Acceptance</u>. If this Contract is accepted, Bidder shall be bound by each and every term, condition, or provision contained in this Contract and in Owner's written notification of acceptance in the form included in this bound set of documents.

D. <u>Remedies</u>. Each of the rights and remedies reserved to Owner in this Contract shall be cumulative and additional to any other or further remedies provided in law or equity or in this Contract.

E. <u>Time</u>. Time is of the essence for this Contract and, except where stated otherwise, references in this Contract to days shall be construed to refer to calendar days.

F. <u>No Waiver</u>. No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by Owner, whether before or after Owner's acceptance of this Contract; nor any information or data supplied by Owner, whether before or after Owner's acceptance of this Contract; nor any order by Owner for the payment of money; nor any payment for, or use, possession, or acceptance of, the whole or any part of the Work by Owner; nor any extension of time granted by Owner; nor any delay by Owner in exercising any right under this Contract; nor any other act or omission of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, or nonconforming Work, nor operate to waive or otherwise diminish the effect of any representation or warranty made by Bidder; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

G. <u>Severability</u>. The provisions of this Contract/ Proposal shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

H. <u>Amendments</u>. No modification, addition, deletion, revision, alteration, or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Bidder, except that Owner has the right, by written order executed by Owner, to make changes in the Work ("Change Order"). If any Change Order causes an increase or decrease in the amount of the Work, then an equitable adjustment in the Contract Price or Contract Time may be made. No decrease in the amount of the Work caused by any Change Order shall entitle Bidder to make any claim for damages, anticipated profits, or other compensation.

I. <u>Assignment</u>. Neither this Contract, nor any interest herein, shall be assigned or subcontracted, in whole or in part, by Bidder except upon the prior written consent of Owner.

J. <u>Governing Law</u>. This Contract, and the rights of the parties under this Contract shall be interpreted according to the internal laws, but not the conflict of law rules, of the State of Illinois. Every provision of law required by law to be inserted into this Contract/Proposal shall be deemed to be inserted herein.

By submitting this Contract proposal in response to this Invitation to Bid, Bidder hereby represents, warrants, and certifies that:
Bidder has carefully examined and read the ITB and all related documents in their entirety.
The person signing the Contract proposal on behalf of Bidder is fully authorized to execute the Contract and bind Bidder to all of the terms and provisions of the Contract.
Bidders has provided a list of client references including at least 4 Municipal References
Bidder has fully completed the entire Contract form, including the Total Contract Price.
Bidder has submitted a certified check or bid bond, as required by the Instructions to Bidders N/A Per Daniel E. Anderson
Bidder has checked the City's website for any addenda issued in connection with this ITB, hereby acknowledges receipt of Addenda Nos. <u>N/A</u> [BIDDERS MUST INSERT ALL ADDENDA NUMBERS], has attached these addenda to Bidder's contract proposal, and acknowledges and agrees that, if Bidder's contract proposal is accepted, these addenda will be incorporated into the Contract and will be binding upon Bidder.
Bidder has submitted its Contract proposal in a sealed envelope that bears the full legal name of Bidder and the name of the Contract.Proposal to be emailed per instructions.
Dated: <u>March 19th</u> , 20 <u>24</u> .
Bidder's Status: (C) Corporation () Partnership () Individual Proprietor (State) (State)
Bidder's Name: Lyons & Pinner Electric Company, Inc
Doing Business As (if different) Lyons Electric Company, Inc
Signature of Bidder or Authorized Agent: Date: March 19, 2024
(corporate seal) Printed Name: Bob Schaeffer
Title/Position: Vice President of Operations
Bidder's Business Address: 650 E. Elm Avenue La Grange, IL 60525
Bidder's Business Telephone: 708-588-6800 Facsimile: 708-588-6805

If a corporation or partnership, list all officers or partners:

NAME	TITLE	ADDRESS
Gary Misicka	CEO/President	650 E. Elm Avenue La Grange, IL 60525
Mike Wilson	Senior Vice President of Operations	650 E. Elm Avenue La Grange, IL 60525
Bob Schaeffer	Vice President of Operations	650 E. Elm Avenue La Grange, IL 60525

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ACCEPTANCE

The Contract attached hereto and by this reference incorporated herein and made a part hereof is hereby accepted by the order of the City of Des Plaines ("Owner") as of ______, 20____.

This Acceptance, together with the Contract attached hereto, constitutes the entire and only agreement between the parties relating to the accomplishment of the Work and the compensation therefor and supersedes and merges any other prior or contemporaneous discussions, agreements, or understandings, whether written or oral, and shall prevail over any contradictory or inconsistent terms or conditions contained in any purchase order, acceptance, acknowledgement, invoice, or other standard form used by the parties in the performance of the Contract. Any such contradictory or inconsistent terms or conditions shall be deemed objected to by Owner without further notice of objection and shall be of no effect nor in any circumstances binding upon Owner unless accepted by Owner in a written document plainly labeled "Amendment to Contract." Acceptance or rejection by Owner of any such contradictory or inconsistent terms or conditions shall not constitute acceptance of any other contradictory or inconsistent terms or conditions shall not

CITY OF DES PLAINES

Signature:	
Printed name:	Michael G. Bartholomew
Title:	City Manager

Client References (Includes Municipalities)

Lake Forest Traffic Signal Maintenance Michael Thomas Public Works Director <u>Thomaselj@cityoflakeforest.com</u> 800 N. Field Dr. Lake Forest, IL 60045 (847) 810-3564

Forest Park Traffic Signal Maintenance Salvatore Stella Public Works Director <u>sstella@forestpark.net</u>

517 Des Plains Ave. Forest Park, Il 60130 (708) 615-6212

Hodgkins Traffic Signal Maintenance Jody Kovel Supt of Public Works 8990 Lyons St. Hodgkins, Il 60525 (708) 579-6700

Palatine Traffic Signal Maintenance Matt Barry Public Works Director <u>publicworks@palatine.il.us</u> 148 W. Illinois Ave. Palatine, Il 60067 (847) 705-5200

Oak Brook Traffic Signal Maintenance Timothy O'Malley Interim Public Works Director 3003 Jorie Blvd Oak Brook, Il 60523 (630) 368-5276

Calumet City Traffic Signal Maintenance Jerico Thomas Commissioner of Public Works <u>publicworks@calumetcity.org</u> 204 Pulaski Road Calumet City, Il 6409 (708) 891-8161 Village of Glenview Traffic Signal Maintenance Joe Kenney Public Works Director <u>jkenney@glenview.il.us</u> 2498 East Lake Avenue Glenview, Illinois 60026 (847) 724-1700

Village of La Grange Traffic Signal Maintenance Richard Colby Public Works Director <u>rcolby@lagrangeil.gov</u> 53 S. La Grange Road

La Grange, IL 60525

Village of Bridgeview Traffic Signal Maintenance Ken Pannaralla Public Works Director <u>kpannarallajr@villageofbridgeview.com</u> 7500 Oketo Ave. Bridgeview, IL 60455 (708) 594-2525

CITY OF DES PLAINES

RESOLUTION R - 85 - 24

A RESOLUTION APPROVING THE PURCHASE OF TRAINFO/TRAFFIC CONTROL CORPORATION EQUIPMENT INSTALLATION SERVICES FROM LYONS & PINNER.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the City has appropriated funds for use by the Fire Department in the 2024 Budget for the purchase of installation services of TRAINFO/Traffic Control Corporation Equipment. ("*Installation Services*"); and

WHEREAS, the City solicited quotes from qualified vendors for the Installation Services; and

WHEREAS, Lyons & Pinner, La Grange, Illinois ("*Vendor*") submitted a quote to perform the Installation Services in the not-to-exceed amount of \$31,650; and

WHEREAS, the City Council has determined that it is in the best interest of the City to waive the competitive bidding requirements and purchase the Installation Services from the Vendor in accordance with the Resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

<u>SECTION 2</u>: <u>WAIVER OF COMPETITIVE BIDDING</u>. The requirement that competitive bids be solicited for the purchase of the Installation Services is hereby waived.

SECTION 3: APPROVAL OF PURCHASE. The City Council hereby approves the purchase by the City of the Installation Services from the Vendor in a total not-to-exceed amount of \$31,650.00 which includes \$3,000.00 in contingency funds.

SECTION 4: AUTHORIZATION OF PURCHASE. The City Manager and the City Clerk are authorized and directed to execute and seal documents approved by the General Counsel, and the City Manager to make payments, on behalf of the City, that are necessary to complete the purchase of Installation Services from the Vendor in a total not-to-exceed amount of \$31,650.

<u>SECTION 5:</u> <u>EFFECTIVE DATE</u>. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

CONSENT AGENDA #3.



PUBLIC WORKS AND ENGINEERING DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5390 desplaines.org

MEMORANDUM

Date: May 29, 2024
To: Dorothy Wisniewski, City Manager
From: Timothy P. Oakley, P.E., CFM, Director of Public Works and Engineering *PO*

Subject: Craig Manor Stormwater Improvement Project - Intergovernmental Agreements with Des Plaines Park District and Metropolitan Water Reclamation District of Greater Chicago

Issue: Intergovernmental Agreements (IGAs) with the Des Plaines Park District and Metropolitan Water Reclamation District of Greater Chicago (MWRD) are required to construct the Craig Manor Stormwater Improvement Project. The IGA with the Des Plaines Park District is required to build the underground storage component of the project within Craig Manor Park. An IGA with the Metropolitan Water Reclamation District of Greater Chicago is necessary to tap up to \$1 million in grant funding from the reclamation district for the project.

Analysis: The Craig Manor Drainage Improvement Project consists of a new stormwater storage facility at Craig Manor Park and relief storm sewers along sections of Madelyn Drive and Mark Avenue. The sewers will convey floodwater to the underground facility for storage during rainfall events and release the water back to the local storm sewer system afterwards. The project will provide below-grade structure flooding relief to 11 at-risk houses and alleviate street flooding in the Craig Manor Subdivision.

As a condition of the agreement and easements with the Des Plaines Park District for the use of Craig Manor Park, the City of Des Plaines will be compensating the park district for improvements to the park as listed on Exhibit D, City Park Improvements, to the Des Plaines Park District IGA, valued at \$387,060.

The MWRD has awarded the City up to \$1 million in grant funding for the project construction. According to that IGA, the MWRD will reimburse the City for 28.35% of the total construction cost of the project with their total contribution not to exceed \$1 million. The City will be reimbursed by the MWRD at 25%, 50%, 75% and 100% construction completion milestones.

The project will be constructed in two construction seasons at an estimated cost of \$4.4 million and will be bid out upon execution of both Intergovernmental Agreements. The Craig Manor Park storage facilities will be constructed this construction season; the relief storm sewers and roadway improvements along Madelyn Drive and Mark Avenue will be constructed in 2025.

Recommendation: We recommend approval of the Intergovernmental Agreements with the Des Plaines Park District and Metropolitan Water Reclamation District of Greater Chicago, including compensating the Des Plaines Park District up to \$387,060 for the use of Craig Manor Park.

Attachments:

Resolution R-107-24

Exhibit A – Intergovernmental Agreement with Des Plaines Park District

Exhibit B – Intergovernmental Agreement with Metropolitan Water Reclamation District of Greater Chicago

CITY OF DES PLAINES

RESOLUTION R - 107 - 24

A RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENTS WITH THE DES PLAINES PARK DISTRICT AND METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR CERTAIN STORMWATER IMPROVEMENTS AT CRAIG MANOR SUBDIVISION.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize and encourage intergovernmental cooperation; and

WHEREAS, the City is an Illinois home-rule municipal corporation authorized to exercise any power or perform any function pertaining to its government and affairs; and

WHEREAS, the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") is authorized to plan, implement, and finance regional and local activities relating to stormwater management in Cook County; and

WHEREAS, the City plans to construct a new stormwater facility at Craig Manor Park to convey floodwater ("*Project*"); and

WHEREAS, Craig Manor Park is owned by the Des Plaines Park District ("Park District"); and

WHEREAS, the City and the MWRD desire to enter into an intergovernmental agreement pursuant to which the City will design, construct, operate and maintain the Project and the MWRD will reimburse the City up to \$1 million of the total construction cost of the Project ("MWRD Intergovernmental Agreement"); and

WHEREAS, the City and the Park District desire to enter into an intergovernmental agreement setting forth the responsibilities of the City and the Park District regarding the Project ("Des Plaines Park District Intergovernmental Agreement"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the MWRD Intergovernmental Agreement and Des Plaines Park District Intergovernmental Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

<u>SECTION 1</u>: <u>**RECITALS**</u>. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF DES PLAINES PARK DISTRICT INTERGOVERNMENTAL AGREEMENT. The City Council hereby approves the Des Plaines Park District Intergovernmental Agreement in substantially the form attached to this Resolution as Exhibit A, and in a final form approved by the General Counsel.

SECTION 3: APPROVAL OF MWRD INTERGOVERNMENTAL AGREEMENT.

The City Council hereby approves the MWRD Intergovernmental Agreement in substantially the form attached to this Resolution as **Exhibit B**, and in a final form approved by the General Counsel.

SECTION 4: AUTHORIZATION TO EXECUTE INTERGOVERNMENTAL

AGREEMENTS. The City Manager is hereby authorized to execute, and the City Clerk is hereby authorized to seal, on behalf of the City, the final MWRD Intergovernmental Agreement and final Des Plaines Park District Intergovernmental Agreement.

<u>SECTION 5</u>: <u>EFFECTIVE DATE</u>. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DES PLAINES AND THE DES PLAINES PARK DISTRICT REGARDING STORMWATER IMPROVEMENTS ON CRAIG MANOR PARK

This Intergovernmental Agreement ("*Agreement*") is made and entered into as of _______, 2024 ("*Effective Date*"), by and between the CITY OF DES PLAINES, a home rule municipal corporation ("*City*"), and the DES PLAINES PARK DISTRICT, an Illinois park district, Cook County, Illinois ("*District*"). The Park District and the City are sometimes referred to individually as a "*Party*" and collectively as the "*Parties*."

IN CONSIDERATION OF the foregoing and the mutual promises contained in this Agreement, the City and the Park District agree as follows.

I. <u>Background</u>.

A. As a result of long-standing stormwater issues within the Craig Manor Subdivision, the City has identified the need to construct a variety of conveyance and storage improvements to improve the stormwater drainage in this area of the City ("*City Stormwater Project*").

B. The District is the owner of the real estate commonly known as Craig Manor Park generally located at 800 Madelyn Drive, Des Plaines, Illinois, which real estate is legally described on *Exhibit A* to this Agreement ("*Property*"). The Park District generally uses the Property for park and recreational activities ("*Park District Purposes*").

C. As part of the City Stormwater Project the City has proposed to utilize a portion of the Property ("*Easement Premises*") (as set forth in the Easement Agreement attached as *Exhibit B* to this Agreement ("*Easement Agreement*"), for the uses set forth in Subsection II.B of this Agreement, which include the construction, operation, and maintenance of an underground vault stormwater storage facility and related appurtenances, all as more specifically set forth in *Exhibit C* to this Agreement ("*Stormwater Improvements*").

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Exhibit A

D. The Parties have determined that, during and after completion of the Stormwater Improvements, the City will, at the City's expense, grade and restore the Easement Premises and construct certain park improvements requested by the District, all as more fully described in *Exhibit D* to this Agreement ("*City Park Improvements*").

E. The Parties desire to memorialize their respective rights and obligations relative to the Stormwater Improvements and City Park Improvements on the Property. To do that, the Parties have agreed to enter into this Agreement and the Easement Agreement.

F. The Parties have the power and authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq*.

II. <u>Stormwater Improvements and City Park Improvements.</u>

A. <u>No Obligation</u>. Nothing in this Agreement obligates the City to construct the Stormwater Improvements on the Property. If the City determines, in its sole discretion, to construct the Stormwater Improvements on the Property, then the terms and conditions of this Agreement will apply. This Agreement will terminate if the City does not commence construction of the Stormwater Improvements ("*Construction Commencement*") by December 31, 2025, unless the Parties agree in writing to extend the date of Construction Commencement ("*Construction Commencement Deadline*").

B. <u>Easement Agreement</u>. Prior to Construction Commencement and after Park District approval of the City Final Plans as provided in Paragraph II of this Agreement, the Park District will grant the City a perpetual and permanent easement on the Easement Premises pursuant to the Easement Agreement that will, among other matters, authorize the City to construct the City Park Improvements and own, survey, design, install, construct, operate, use, test, inspect, improve,

 $\{00014185.2\}$

maintain, repair, remove, and replace the City Stormwater Improvements in the locations on the Property as identified in the Easement Agreement. The City Park Improvements will be owned by the Park District. The Easement Agreement will be perpetual notwithstanding the term of this Agreement; provided that if this Agreement terminates prior to Construction Commencement, the Easement Agreement will not be executed or recorded.

C. <u>City Obligations</u>. The City will construct, if at all, and maintain the Stormwater Improvements, at its sole cost and expense and in compliance with this Agreement and all applicable federal, state, and City laws, statutes, codes, ordinances, resolutions, rules and regulations, including, without limitation, any and all applicable regulations and permits issued by any other governmental entity with jurisdiction related to the City Stormwater Improvements (collectively, "*Requirements of Law*"). The Stormwater Improvements will be constructed and maintained so that they do not make impracticable or infeasible the construction and maintenance of the Property or make impractical or infeasible the Park District's continued use of the Property for the Park District Purposes. The City will construct the Stormwater Improvements and the City Park Improvements in accordance with the City Final Plans (as provided in Paragraph II.E.3 of this Agreement).

D. <u>Cooperative Development and Review of Plans for the City Park Improvements.</u>

1. <u>Final Plans</u>. The Park District will provide the City with details regarding the City Park Improvements it desires to be constructed in connection with the Stormwater Improvements. After the City and the Park District arrive at a preliminary design for the City Park Improvements (*"Preliminary Design"*), the City will prepare plans and specifications for the City Park Improvements (*"Final Plans"*). The City will provide the Park District with the Final Plans for the City Park Improvements for the Park District's review and comment. The Park District

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shall provide the City with any written comments on the City Final Plans, if any, within 30 days after receipt of the Final Plans ("*Comment Deadline*"). The City shall consider the Park District's comments and make any changes to the Final Plans that the City deems appropriate. The City will also provide to the Park District a written response to the Park District's comments ("*Final City Response*"). The City shall send to the Park District the last version of the Final Plans with the Final City Response and a written notice setting forth the date of the Approval Deadline (defined below).

2. <u>Approval of Final Plans</u>. On or before the Comment Deadline (if the Park District had no written comments) or within 30 days after the Final City Response is received by the Park District (if the Park District provided written comments) ("*Approval Deadline*"), the Park District shall approve the Final Plans in writing ("*District Approval*") so long as the Final Plans are substantially the same as the Preliminary Design. The Final Plans shall be deemed approved if the Park District does not provide the City with either Park District Approval or Park District Disapproval on or before the Approval Deadline.

E. <u>Construction Schedule; Park Interruption</u>.

1. <u>Construction Schedule</u>. Prior to Construction Commencement, the City and the Park District will consult and cooperate with each other to agree upon a construction schedule for the construction of the Stormwater Improvements and the City Park Improvements ("*City Construction Schedule*"). Once approved in writing by both Parties, which approval shall not be unreasonably withheld, the City Construction Schedule shall automatically be deemed to be attached to this Agreement as *Exhibit E*. The City Construction Schedule will be consistent with the Requirements of Law, including, without limitation, any permits for the project. Construction of the Stormwater Improvements and City Park Improvements will only commence after (i) the

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establishment of the City Construction Schedule as provided in this Paragraph and (ii) Park District Approval of the Final Plans.

2. <u>Park Interruption During Construction</u>. The City will provide the Park District written notice at least 30 calendar days prior to Construction Commencement. During the Construction Period the City will have exclusive use of the Easement Premises and the Park District will be prevented from undertaking use of the Easement Premises for any of the Park Purposes, except that the Park District shall have the ability to access any portion of the Easement Premises not under construction and the remainder of the Property. The City will manage construction of the Stormwater Improvements and the City Park Improvements to reasonably minimize, to the extent practicable, the duration interference with the Park District's use of the areas of the Property not included within the Easement Premises for Park Purposes.

F. Acceptance and Maintenance of City Park Improvements.

1. <u>City Responsibility</u>. The City shall have sole responsibility to construct, at its sole cost, the City Park Improvements in accordance with this Agreement and to construct and maintain, at its sole cost, the Stormwater Improvements in accordance with this Agreement.

2. <u>As-Built Plans</u>. Within 90 days after substantial completion of the City Park Improvements, the City shall provide the Park District as-built construction plans for the City Park Improvements.

3. <u>Acceptance</u>. Upon construction of the City Park Improvements and the provision of the As-Built Plans, the Park District will accept ownership of and future maintenance responsibility for the City Park Improvements.

III. <u>Indemnification; Insurance</u>.

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A. <u>Indemnification</u>. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party, its elected and appointed officers, officials, employees, volunteers and agents (collectively, the "*Indemnitees*"), from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), incurred by any of the Indemnitees for injuries to persons or for damage, destruction or theft of property arising out of or resulting from any activity, act or omission of the indemnifying Party, or of any employee, agent, affiliate, vendor, co-sponsor, invitee, contractor, student or volunteer of the indemnifying Party (the indemnifying Party and each and every such other person being hereinafter individually and collectively referred to as the "*Indemnitee*"), but only to the extent caused in whole or in part by any wrongful or negligent act or omission of the Indemnitor. Similarly, each Party shall indemnify, defend and hold harmless the Indemnitees from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), incurred by any of the Indemnitees by reason of the Indemnitor's breach of any of its obligations under this Agreement.

B. <u>Insurance</u>. Each Party, at its sole cost and expense, shall keep in full force and effect at all times during the Term of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with this Agreement. Each Party shall provide coverage that is at least as broad as:

1. Commercial general liability insurance, including contractual liability coverage, and such other types of insurance in such amounts and with such A -rated companies or through self-insurance risk pools as are reasonably acceptable to the City and the Park District, but, in any event, no less than \$1,000,000 per occurrence. Such insurance shall be evidenced by annually providing to the other Party certificates of insurance. Said insurance shall name the other

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Party as an additional insured and will further provide that the insurance may not be modified, terminated, cancelled or non -renewed without at least 30 days advance written notice by certified mail, return receipt requested to the other Party.

2. Workers' Compensation Insurance covering all costs, statutory benefits and liabilities under State Workers' Compensation and similar laws for their respective employees. Any employee claim related to this Agreement will be the responsibility of the Party employer and the other Party shall have no obligation whatsoever to provide workers' compensation for the other Party's employees.

3. The minimum insurance coverage specified in this section may be provided by self-insurance, participation in a risk management pool, commercial policies of insurance, or a combination thereof. Given the nature and duration of this Agreement, required insurance coverage or amounts may need to be modified to adequately protect the Parties against possible claims arising from the Parties' rights and obligations under the terms of this Agreement. The Parties shall, from time to time, mutually review the insurance coverage required in this Section, and shall mutually agree upon increases in coverage amounts or additional insurance as may be commensurate with similar agreements or other similarly situated parties in the Chicagoland area and as may be reasonably necessary to protect the Parties against these risks.

C. <u>No Waiver of Tort Immunity Defenses</u>. Nothing in this Agreement is intended to constitute nor will constitutes a waiver of the rights, defenses, and immunities provided or available to either Party under the Illinois Local Government and Governmental Employees Tort Immunity Act with respect to claims by third parties.

IV. <u>Miscellaneous Provisions</u>.

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A. <u>Enforcement</u>. The City and the Park District may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement.

B. <u>Term</u>. Unless terminated earlier as provided in this Agreement, this Agreement will be in full force and effect from and after its Effective Date for a period of 5 years or until the completion of the Stormwater Improvements and the acceptance of the City Park Improvements, whichever occurs first ("*Initial Term*"), unless earlier terminated pursuant to this Agreement. Following the expiration of the Initial Term, this Agreement may be renewed upon mutual agreement of the Parties.

C. <u>No Assignment</u>. No Party may assign any rights or duties under this Agreement without the prior express written consent of the other Party.

D. <u>Successors</u>. This Agreement shall be binding upon the successors of the Parties' respective governing boards.

E. <u>Relationship of the Parties; No Third-Party Beneficiaries</u>. No employee, volunteer, or agent of one Party shall be considered the employee, volunteer, or agent of the other Party. Nothing contained in or done pursuant to this Agreement shall be construed as creating a partnership, agency, joint employer, or joint venture relationship between the Park District and the City. Notwithstanding any provision to the contrary, this Agreement is entered into solely for the benefit of the Parties. Nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Park District or the City.

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F. <u>Entire Agreement</u>. This Agreement, including the Exhibits, shall constitute the entire agreement of the Parties with respect to the matters contained in this Agreement and this Agreement supersedes all prior agreements and understandings, whether written or oral, formal, or informal.

G. <u>Notice</u>. Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective upon personal delivery or on the third day after mailing by first class mail, registered, or certified mail, postage prepaid, or on the next day after mailing by a national overnight courier, addressed to:

<u>To the City</u>: Attention: City Manager City of Des Plaines 1420 Miner Street Des Plaines, Illinois 60018

With a copy to: City Attorney Peter Friedman Elrod Friedman LLP 325 N. LaSalle Street Suite 450 Chicago, Illinois 60654 To the Park District: Attention: President Des Plaines Park District 2222 Birch Street Des Plaines, Illinois 60018

With a copy to: Park District Attorney

Either party may change the person or address to which such notices are to be given by giving prior written notice to the other party in accordance with this Subsection.

H. <u>Exhibits</u>. Exhibits A-E are incorporated into and made part of this Agreement.

I. <u>Amendments</u>. This Agreement may not be amended except by a written document

signed by authorized representatives of both Parties and dated a date after the Effective Date of

this Agreement.

J. <u>Compliance with Law</u>. The Parties shall comply with all applicable Requirements

of Law.

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K. <u>Authority to Execute</u>. Each of the Parties warrants and represents that the persons executing this Agreement on its behalf have been properly authorized to do so.

L. <u>Calendar Days and Time.</u> Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, federal, State, or Park District holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, federal, State, or Park District holiday.

M. <u>Governing Law</u>. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

N. <u>No Waiver</u>. The failure of either Party to insist upon the performance of any terms and conditions, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no waiver had occurred.

O. <u>Severability</u>. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, this Agreement shall terminate, unless the Parties otherwise agree in writing.

P. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

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Q. <u>Effective Date</u>. This Agreement shall be deemed dated and become effective on the date set forth in the first paragraph on the first page of this Agreement.

CITY OF DES PLAINES

DES PLAINES PARK DISTRICT

By:	By:
Its: City Manager	Its:
Date:	Date:
ATTEST:	ATTEST:
Its: City Clerk	Its:

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List of Exhibits

Exhibit A	Depiction and Description of Property
Exhibit B	Easement Agreement
Exhibit C	Stormwater Improvements
Exhibit D	City Park Improvements
Exhibit E	City Construction Schedule

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<u>Exhibit A</u> Description of Property

Lot 150 in Unit No. 2 of Joseph H. Anderson's Craig Manor, Being a Subdivision in the Southwest Quarter of the Southwest Quarter of Section 36, Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois, on April 6, 1960 as Document Number 1916169.

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<u>Exhibit B</u> Easement Agreement

If at any time after construction of any of the City Stormwater Project, the Park District desires to make modifications to existing facilities or install additional facilities on Park District property for which the City has been granted a permanent easement under this Agreement shown in the enclosed map, the Park District shall provide the City prior notice of such modification prior to any work being conducted. Similarly, if at any time after construction of any of the City Stormwater Project, the City desires to make modifications to existing facilities or install additional facilities in the same area of the easement, notice shall be provided to the Park District prior to any work being constructed. It is agreed by both Parties that neither the City nor the Park District will construct or modify any improvements in a manner that will interfere with the operation or maintenance of the City Stormwater Project.

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PREPARED BY AND AFTER RECORDING RETURN TO:

Peter M. Friedman Elrod Friedman LLP 325 N. LaSalle Street Suite 450 Chicago, Illinois 60654

For Recorder's Use Only

NON-EXCLUSIVE EASEMENT AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF STORMWATER IMPROVEMENTS IN CRAIG MANOR PARK

THIS NON-EXCLUSIVE EASEMENT AGREEMENT ("Agreement") is dated as of this

_____ day of _____, 2024, by and between the CITY OF DES PLAINES, an Illinois home rule

municipal corporation ("City"), and the DES PLAINES PARK DISTRICT, an Illinois park district

("Park District").

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

1. **BACKGROUND**.

A. The Park District is the owner of the real estate commonly known as Craig Manor Park generally located at 800 Madelyn Drive, Des Plaines, Illinois, which real estate is legally described on *Exhibit 1* to this Agreement ("*Property*"). The Park District generally uses the Property for recreational activities.

B. In cooperation with the Metropolitan Water Reclamation District ("MWRD"), the City has determined that it is necessary to construct and maintain underground stormwater

storage, conveyance, and water quality improvements within the Craig Manor Subdivision in order to address stormwater issues in the area (*"Craig Manor Subdivision Project"*).

C. As part of the Craig Manor Subdivision Project, the City has determined it is necessary to construct an underground vault stormwater storage facility and related appurtenances on the Property (collectively, the *"Stormwater Improvements"*).

D. The Parties have entered into an intergovernmental agreement ("*IGA*") pursuant to which the City has agreed that, after completion of the Stormwater Improvements, the City shall, at the City's expense, grade and restore the Easement Premises and construct certain park improvements requested by the Park District ("*City Park Improvements*").

E. The Park District and the City desire to enter into this Agreement in order to comply with the terms of the IGA and grant the City the necessary right to install, operate, and maintain the Stormwater Improvements on the Property.

2. <u>GRANT AND USE OF EASEMENT</u>. The Park District grants, conveys and dedicates to the City a perpetual non-exclusive easement in, at, over, along, across, through, upon and under the locations on the Property as described and depicted on *Exhibit 2* (*"Easement Premises"*), solely to own, survey, design, install, construct, operate, use, test, inspect, improve, maintain, repair, remove, abandon in place, and replace (collectively, *"Work"*) the Stormwater Improvements (collectively, the *"Permitted Uses"*), together with all reasonable rights of ingress and egress over, along, across, and upon the Easement Premises necessary for the exercise of the rights granted in this Agreement. The granting of the easement in this Agreement is conditioned on the requirement that the Work and the Stormwater Improvements will not be materially modified or deviate materially from the Final Plans, as defined in the IGA between the Parties, without the prior written approval of the Park District. The Stormwater Improvements and all Work on the Stormwater Improvements shall comply at all times with all applicable federal, state, and City laws, statutes, codes, ordinances, resolutions, rules and regulations, including, without limitation, any and all

applicable regulations and permits issued by any other governmental entity with jurisdiction related to the Stormwater Improvements ("*Requirements of Law*").

3. <u>GRANT OF TEMPORARY CONSTRUCTION EASEMENTS</u>. The Park District grants, conveys and dedicates to the City a temporary construction easement in, at, over, along, across, through, upon and under the locations on the Property as described and depicted on *Exhibit 2* (*"Temporary Easement Premises"*), for the construction of the Stormwater Improvements and the City Park Improvements, together with all reasonable rights of ingress and egress over, along, across, and upon the Easement Premises necessary for the exercise of the rights

4. <u>CONSTRUCTION ACTIVITY</u>.

A. The Park District will not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the Work, the Stormwater Improvements, City Park Improvements, and the City's use of the Easement Premises.

B. The City will ensure that the Easement Premises and Temporary Easement Premises are maintained in a safe condition during the Work. The City will install all legally required warning signage, barricades and other safety materials appropriate for the Property and the Easement Premises. All Work by the City or any contractor, subcontractor, consultant, or other entity hired by the City to perform Work on the Easement Premises or Temporary Easement Premises will be performed in a workmanlike manner and in accordance with the Requirements of Law. The City will be the owner of all Stormwater Improvements constructed on the Easement Premises. The Park District will be the owner of all of the City Park Improvements (as defined in the IGA).

C. The City will be responsible for the payment of all costs associated with the City's Work on the Stormwater Improvements and City Park Improvements.

5. **HOLD HARMLESS**. To the extent permitted by law, the City shall indemnify and hold harmless the Park District, its Board of Commissioners, and all Park District elected and appointed officials, officers, employees, agents, representatives, engineers, architects, and attorneys

("*Park District Parties*"), from and against all claims and liability, including reasonable attorneys' fees and costs, that may be asserted at any time by a third party against any of the Park District Parties arising out of or in any way connected with the actions or omissions related to Work related to the Stormwater Improvements or to the City's performance of its obligations under this Agreement.

6. <u>**RESERVED RIGHTS.</u>** The Park District reserves the right to occupy, use, and improve the Easement Premises in any manner that will not make impracticable or infeasible the Work or otherwise materially and unreasonably interfere with or prevent the City from utilizing the Easement Premises for the Permitted Uses.</u>

7. <u>ADDITIONAL EASEMENTS</u>. The Park District shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises provided such other easements are subject to this Agreement and the rights granted hereby and do not unreasonably interfere with the City's rights under this Agreement. The Park District will provide advance written notice to the City of any such other easements.

8. <u>CITY PARK IMPROVEMENTS AND RESTORATION.</u>

A. In compliance with the Final Plans, upon completion of the initial Work to construct and install the Stormwater Improvements, the City shall construct the City Park Improvements and, to the extent areas are not part of the City Park Improvements: (a) replace and grade any and all topsoil removed by the City as a result of such Work and seed with grass seed; and (b) restore the Easement Premises to the condition immediately preceding the Work, and any roads, paved areas, plantings, and improvements damaged or removed as a result of such Work; except to the extent altered by the City Park Improvements.

B. After any Work subsequent to the initial installation of the Stormwater Improvements, the City shall: (a) replace and grade any and all topsoil removed by the City as a result of such Work and seed with grass seed; and (b) restore the Easement Premises to the condition

immediately preceding the Work, and any roads, paved areas, plantings, and improvements damaged or removed as a result of such Work.

C. If after written notice, the City does not restore the Easement Premises as required by this Agreement and within a commercially reasonable period of time, the Park District may restore the property and the City shall reimburse the Park District for its costs within 60 days after the Park District provides the City with a detailed invoice.

9. **COVENANTS RUNNING WITH THE LAND**. The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, the obligations assumed by the City and the Park District in this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, obligations, agreements and covenants which run with the land and be binding upon and inure to the benefit of the Park District and the City and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Property, or any portion thereof, and all persons claiming under them. This Agreement shall be recorded against the Property. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current Governor of the State of Illinois.

10. <u>ASSIGNMENT OF RIGHTS</u>. The Park District agrees that the City may delegate its duties under this Agreement with written notice to the Park District or assign this Agreement, with the Park District's approval (which approval will not be unreasonably withheld), to an assignee: (a) who is reasonably competent to exercise the rights granted herein and perform the obligations imposed herein; and (b) who provides adequate assurances that any Work performed pursuant to

such assignment or delegation will be conducted in a good and workmanlike manner and in the manner required by this Agreement.

11. <u>AMENDMENT</u>. This Agreement may be modified, amended, or annulled only by the written agreement of the Park District and the City.

12. **EXHIBITS**. Exhibits 1 and 2 attached to this Agreement are incorporated into this Agreement and made a part of this Agreement.

13. **<u>ENFORCEMENT</u>**. The Park District and the City may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel performance of this Agreement.

14. <u>NOTICE</u>. Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective upon personal delivery or on the third day after mailing by first class mail, registered, or certified mail, postage prepaid, or on the next day after mailing by a national overnight courier, addressed to:

<u>To the City</u>: Attention: City Manager City of Des Plaines 1420 Miner Street Des Plaines, Illinois 60018

With a copy to: City Attorney Peter Friedman Elrod Friedman LLP 325 N. LaSalle Street Suite 450 Chicago, Illinois 60654 <u>To the Park District</u>: Attention: President Des Plaines Park District 2222 Birch Street Des Plaines, Illinois 60018

With a copy to: Park District Attorney

Either party may change the person or address to which such notices are to be given by giving

prior written notice to the other party in accordance with this Subsection.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed to be effective as of the date first above written.

CITY OF DES PLAINES

By: ______ City Manager

ATTEST:

By:

City Clerk

DES PLAINES PARK DISTRICT

By: _____ President

ATTEST:

By: _____

Its:

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)) SS COUNTY OF COOK)

On ______, 2024, Dorothy Wisniewski, the City Manager of the City of Des Plaines, an Illinois home rule municipal corporation, and Laura Fast, the Deputy City Clerk of said municipal corporation, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed.

Signature of Notary

SEAL

STATE OF ILLINOIS)	
)	SS
COUNTY OF COOK)	

On ______, 2024, _____, the President of the Des Plaines Park District, and ______, the ______ of said Park District, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed pursuant to the authority of the Des Plaines Park District for the uses and purposes set forth therein.

Signature of Notary

SEAL

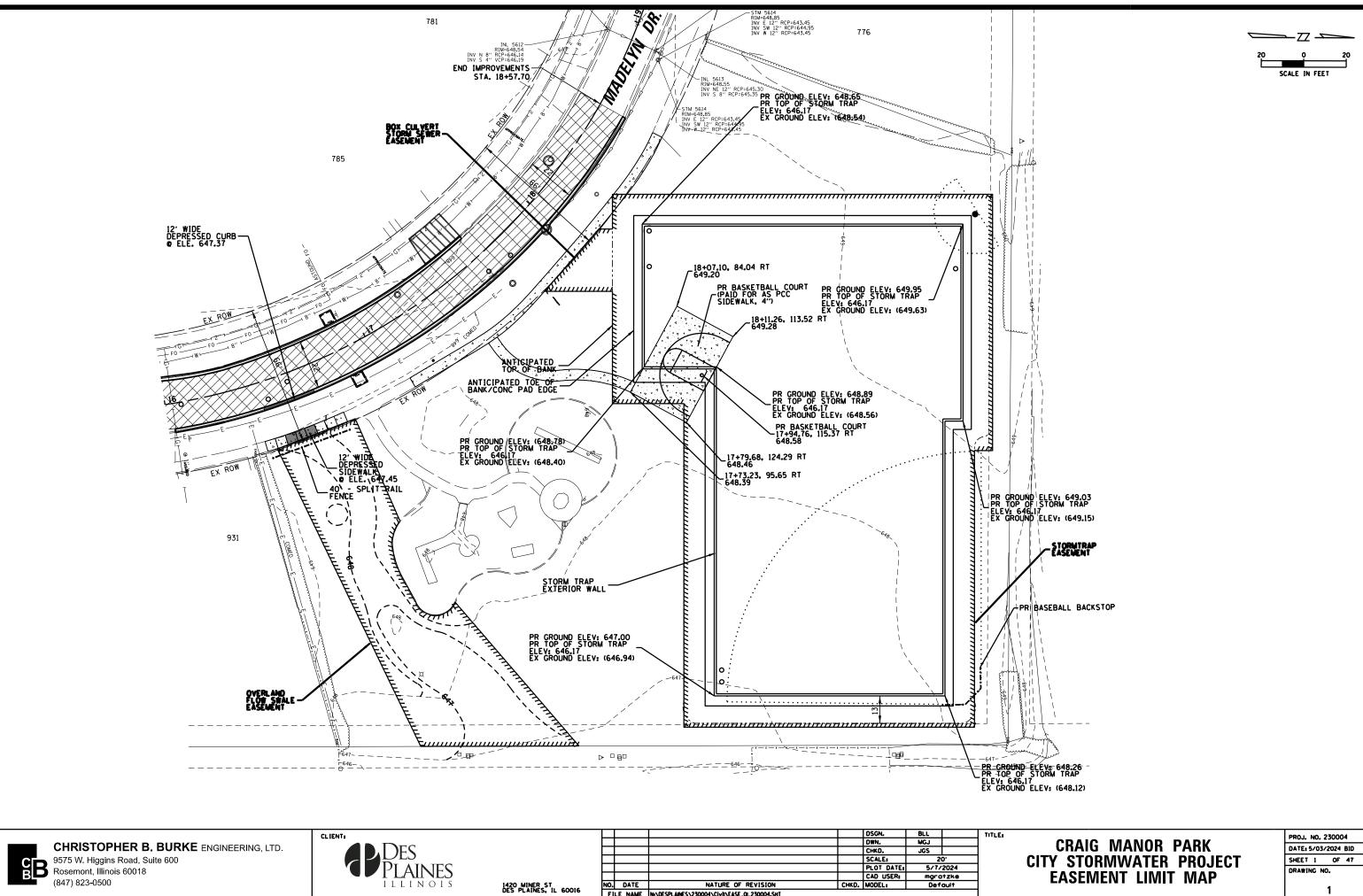
EXHIBIT 1 TO EASEMENT AGREEMENT

Legal Description of the Property

Lot 150 in Unit No. 2 of Joseph H. Anderson's Craig Manor, Being a Subdivision in the Southwest Quarter of the Southwest Quarter of Section 36, Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois, on April 6, 1960 as Document Number 1916169.

EXHIBIT 2 TO EASEMENT AGREEMENT

Depiction of Easement Premises and Temporary Easement Premise



<u>Exhibit C</u> <u>Stormwater Improvements</u>

The Craig Manor Subdivision, located northeast of Wolf Road and Central Road, has experienced repeated, significant flooding over the years. Several homes were impacted with flooded basements and garages. The Craig Manor Drainage Improvement Project (City Stormwater Project) consists of a new 2.5 acre-foot stormwater storage facility at Craig Manor Park with relief storm sewers to convey floodwater to the facility, and a grass overflow swale on the south side of the park. The improvement project provides significant flood reduction and is designed to prevent structure flooding.

Synthetic turf addition to existing playground	\$170,930.77
Excavate new play area, sidewalk, shelter pad	\$10,000.00
Synthetic turf new play area	\$35,301.68
Additional play equipment	\$30,000.00
Concrete curb play area	\$4,800.00
Concrete basketball court by city contractor	
Sidewalk to shelter - walk to court provided by	\$4,500.00
city	
Picnic shelter concrete	\$5,500.00
Picnic shelter	\$22,000.00
Concrete for footings: playground and shelter	\$5,000.00
Basketball goals	\$5,000.00
Site furnishings: benches, tables, trash	\$5,000.00
receptacles	
	\$298,032.45
Design consultant @ 12%	\$39,567.89
Escalation and contingency @ 15%	\$49,459.86
Opinion of Probable Cost	\$387,060.20

<u>Exhibit D</u> <u>City Park Improvements</u>

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<u>Exhibit E</u> <u>Anticipated City Construction Schedule</u>

Notwithstanding any unforeseen circumstances, the City shall adhere to the best of its ability to the anticipated project schedule set forth below. If deviation or revision of this schedule is necessary, the City shall advise the Park District of the same and the City and Park District shall jointly accommodate any issues that may arise as a result of the deviation or revision in the schedule. Construction of the City Stormwater Project shall not commence until the Park District is satisfied that the City has provided sufficient assurance and security to reasonably guarantee the design, construction and completion of all the improvements according to the construction schedule.

The Park District shall designate a representative for the City Stormwater project. The Park District representative shall be invited and permitted to attend and participate in all design, preconstruction and construction progress meetings and shall be permitted to observe the construction work in progress during normal business hours. The Park District shall be copied on all projectrelated correspondence.

July 2024 – Pre-construction meeting and contractor mobilization

November 2024 - Completion of StormTrap storage vault, backfill, seed, and winter shutdown

March 2025 - Roadway drainage construction

May 2025 – Punchlist items, landscaping.

June 2025 – Project closeout, open park.

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INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF DES PLAINES AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR THE DESIGN, CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE CRAIG MANOR DRAINAGE SYSTEM IMPROVEMENTS IN DES PLAINES, ILLINOIS

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC"), a unit of local government and corporate and body politic organized and existing under the laws of the State of Illinois, and the City of Des Plaines ("City"), a municipal corporation and home rule unit of local government organized and existing under Article VII, Section 6 of the 1970 Constitution of the State of Illinois. Together, the MWRDGC and the City may be referred to as the "Parties" and each individually as a "Party".

WITNESSETH:

WHEREAS, on November 17, 2004, Public Act 093-1049 amended the Metropolitan Water Reclamation District Act ("Act") in various ways; and

WHEREAS, the Act, as amended, declares that stormwater management in Cook County, Illinois is under the general supervision of the MWRDGC; and

WHEREAS, Public Act 098-0652 amended the Act again on June 18, 2014 by specifically authorizing the MWRDGC to plan, implement, and finance activities relating to local stormwater management projects in Cook County, Illinois; and

WHEREAS, the City is located within the boundaries of Cook County, Illinois; and

WHEREAS, pursuant to 65 ILCS 5/11-109-1, 65 ILCS 5/11-110-1 et seq., and the City's home rule authority under Section 6(a) of Article VII of the Constitution of the State of Illinois, the City is empowered to construct stormwater conveyance and storage improvements and infrastructure to improve the stormwater drainage in the City; and

WHEREAS, the City proposes to construct conveyance and storage improvements including storm sewers and box culverts along Madelyn Drive between Thereses Terrace and Craig Manor Park, storm sewers extending 375 feet to the west of Madelyn Drive along Mark Avenue,

23-IGA-33

Page 1 of 20

Exhibit B

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and storm trap storage chambers in Craig Manor Park, in the Craig Manor subdivision in Des Plaines, Illinois, for the public benefit of improving stormwater drainage and management in the general area ("Public Benefit").

WHEREAS, the City intends to design, construct, operate, maintain, and own the proposed stormwater infrastructure; and

WHEREAS, the City's plans to construct the proposed stormwater infrastructure may be accomplished more effectively, economically, and comprehensively with the City and the MWRDGC cooperating and using their joint efforts and resources; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Section 10 of Article VII of the Illinois Constitution, allow and encourage intergovernmental cooperation; and

WHEREAS, on, September 21, 2023, the MWRDGC's Board of Commissioners authorized the execution of an intergovernmental agreement with the City; and

WHEREAS, on _____, the City Council of Des Plaines authorized the execution of an intergovernmental agreement with the MWRDGC; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the MWRDGC and the City agree as follows:

Article 1. Incorporation of Recitals

The above recitals are incorporated by reference and made a part of this Agreement.

Article 2. Scope of Work

 The work contemplated by this Agreement will include design, construction, operation, and maintenance of the stormwater infrastructure consisting of conveyance improvements along Madelyn Drive and Mark Avenue with storage improvements within Craig Manor Park ("Project"). These improvements are categorized by the MWRDGC as "local stormwater infrastructure."

23-IGA-33

Page 2 of 20

Exhibit B

Page 33 of 172

- 2. The City, at its sole cost and expense, will prepare construction drawings, specifications, and details ("Construction Documents") for the Project.
- 3. The Project will realize the Public Benefit of helping to alleviate flooding within and around the Project area, as shown in Exhibit 1.
- Upon execution of this Agreement and until commencement of Project construction, the City will provide monthly updates to the MWRDGC on (1) the status and progress of Project design and (2) the schedule for Bid Advertisement and Award for the Project.
- 5. The City will provide the MWRDGC with a copy of thirty percent (30%), sixty percent (60%), and ninety-eight percent (98%) complete Construction Documents for the MWRDGC's approval as to the Public Benefit. The MWRDGC will review and provide written comments to the City within thirty (30) calendar days of receipt. The City will incorporate the MWRDGC's review comments into the Construction Documents.
- 6. Upon award of any Project-related construction contracts, the City will provide monthly updates to the MWRDGC as to (1) construction progress and (2) anticipated timeframes for submission of reimbursement requests, with the final request being submitted no later than sixty (60) calendar days after final completion of the Project construction. Also, upon award, the City will provide the following to the MWRDGC: (1) a copy of its bid advertisement, including all newspaper, on-line, or any other media utilized by the City; (2) a summary or tabulation of bids received; (3) a breakdown of unit costs; and (4) a copy of the City's approval, resolution, or equivalent awarding the contract.
- 7. After construction, the City will provide the MWRDGC with a copy of as-built drawings and related Project documentation, including any addenda, change orders, stormwater-related shop drawings, and field changes.
- 8. The MWRDGC retains the discretion to adjust the amount of its reimbursement commitment if, based on the MWRDGC's review of the final Construction Documents—including any addenda, change orders, shop drawings, or field changes—it determines that the Project will not provide the intended Public Benefit.
- 9. Although the MWRDGC will reimburse the City for a portion of the Project costs, the City bears sole responsibility for the overall cost, expense, and payment for the Project, which the City will construct in accordance with the final Construction Documents.

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- 10. To the extent practicable, the City, its agents, contractors, or employees may elect to use the MWRDGC's biosolids in any amendments performed to the soil of the Project area, including but not limited to landscaping. Subject to availability, the MWRDGC will provide biosolids free of charge. The City may be required to arrange and pay for the transportation necessary to deliver the biosolids to the Project area.
- 11. The City will publicly advertise the Project and publicly award all Project-related construction contracts to the lowest responsible bidder as determined by the City. The City will notify the MWRD prior to posting the request for bids. The City will consider and act in general accord with the applicable standards of the MWRDGC's Purchasing Act, 70 ILCS 2605/11.1-11.24 (attached to this Agreement as <u>Exhibit 2</u>), when advertising and awarding the construction contracts. The City will also require a payment bond and performance bond for all Project-related construction contracts in general accord with the applicable standards of <u>Exhibit 2</u>. The City may impose more stringent requirements than those contained in <u>Exhibit 2</u> when awarding Project-related construction contracts, but in no event will the City's requirements fall below the MWRDGC's applicable general standards. Although the City need not include the attached <u>Exhibit 2</u> as part of its bid documents, the City is responsible for ensuring that these applicable minimum requirements are met.
- 12. The City agrees that the Project is a "Covered Project" as defined in the MWRDGC's Multi-Project Labor Agreement for Cook County ("MPLA") (attached to this Agreement as Exhibit <u>3</u>). As such, the City agrees to be obligated as the MWRDGC would be in the MPLA and will ensure that the standards and requirements for "Covered Projects" will be met for the Project, as applicable. The City may impose more stringent requirements than those contained in the MPLA when awarding Project-related construction contracts, but in no event will the City's requirements fall below the standards for "Covered Projects" detailed in it. Although Exhibit <u>3</u> need not be included as part of the Project's bid documents, the City is responsible for ensuring that its applicable minimum requirements are met.
- 13. The City must comply with the applicable portions of the MWRDGC's Affirmative Action Ordinance and Diversity Policies. Revised Appendix D governs Affirmative Action goal requirements for subcontracting with Minority and Women Owned Business Enterprises (attached to this Agreement as <u>Exhibit 4</u>). Appendix V governs the diversity policy

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requirements for subcontracting with Veteran-owned Business Enterprises (attached to this Agreement as Exhibit 5.) Collectively these goals are referred to as "participation goals."

- 14. The City <u>must</u> meet the following participation goals applicable to the Project before construction is completed:
 - a. Twenty percent (20%) of the total amount of reimbursement provided by the MWRDGC for the Project must be applied to work performed by Minority-owned Business Enterprises ("MBE"); and
 - b. Ten percent (10%) of the total amount of reimbursement provided by the MWRDGC for the Project must be applied to work performed by Women-owned Business Enterprises ("WBE"); and
- 15. The City **should** meet the following participation goal applicable to the Project before construction is completed: three percent (3%) of the total amount of reimbursement provided by the MWRDGC for the Project should be applied to work performed by Veteran-owned Business Enterprises ("VBE").
- 16. The determination as to whether the City has complied with the requirements of this Agreement by attaining the MWRDGC's participation goals is solely in the MWRDGC's discretion. If the City fails to attain each goal as determined by the MWRDGC, the MWRDGC may withhold payments to the City up to or equal to the dollar amount by which the City failed to attain the participation goal(s).
- 17. The City will provide the MWRDGC access to inspect, with reasonable notice, any records or documentation related to the City's compliance with the MWRDGC's participation goals and requirements for the Project.
- 18. To evidence compliance with the MWRDGC's participation goals, the City must submit the following items to the MWRDGC's Diversity Administrator prior to the start of construction: (1) a completed Utilization Plan for MBE/WBE participation, attached to this Agreement as <u>Exhibit 6</u> and a completed VBE Commitment Form, attached to this Agreement as <u>Exhibit 7</u> and (2) a current letter from a certifying agency that verifies as appropriate the MBE/WBE/VBE status of each vendor listed as a subcontractor on the MBE/WBE Utilization Plan and VBE Commitment Form. A certification letter will be deemed current so long as its expiration date is after the date of the Utilization Plan or Commitment Form. Failure to timely

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submit a Utilization Plan, Commitment Form, or certifying letter may result in a payment delay or denial.

- 19. Together with each and every reimbursement request, the City must submit to the MWRDGC the following: (1) a MBE/WBE and VBE Status Report ("Status Report"), attached to this Agreement as <u>Exhibit 8</u>; (2) full or partial lien waivers from the participating MBE/WBE/VBE vendors, as applicable; and (3) proof of payment to the participating MBE/WBE/VBE vendors (e.g., canceled checks), as applicable. Failure to submit a Status Report and any supporting documentation may result in a payment delay or denial.
- 20. The City will comply with the Prevailing Wage Act, 820 ILCS 130/0.01 *et seq*. Current prevailing wage rates for Cook County are determined by the Illinois Department of Labor and are available on the Illinois Department of Labor's official website. It is the responsibility of the City to obtain and comply with any revisions to the rates should they change during the construction phase of this Agreement.
- 21. The City, at its sole cost and expense, will provide (1) the final design of the Project; (2) land acquisition and remediation, if any; and (3) construction oversight and administrative support for the Project.
- 22. The City will submit an Operation and Maintenance Plan ("O&M Plan") for the MWRDGC's review. The O&M Plan will be included as part of this Agreement as <u>Exhibit 9</u>. At its sole cost and expense, the City will operate and maintain the Project in accordance with the O&M Plan.
- 23. The MWRDGC will reimburse the City for twenty-eight and 35/100 percent (28.35%) of the total construction cost of the Project, but in no event will that amount exceed one million and 00/100 Dollars (\$1,000,000.00) ("Maximum Reimbursement Amount"). For purposes of this Agreement, "construction" will mean all work necessary to build the Project as depicted in the Construction Documents. The City will be responsible for securing funding or contributing its own funds for all costs necessary to construct the Project in accordance with the Construction Documents. The City will be solely responsible for change orders, overruns, or any other increases in the cost of the Project. All funding provided by the MWRDGC will be exclusively to reimburse the City for construction of the Project.
- 24. The MWRDGC will disburse funds to the City in accordance with the following schedule:

- a. Twenty-five percent (25%) of the Maximum Reimbursement Amount at receipt of reimbursement request for twenty-five percent (25%) completion of construction;
- b. Twenty-five percent (25%) of the Maximum Reimbursement Amount at receipt of reimbursement request for fifty percent (50%) completion of construction;
- c. Twenty-five percent (25%) of the Maximum Reimbursement Amount at receipt of reimbursement request for seventy-five percent (75%) completion of construction; and
- d. Subject to the Maximum Reimbursement Amount, the remaining amount necessary to cover the MWRDGC's share of the total construction cost as detailed in Article 2, Paragraph 23 will be paid upon receipt of invoices for final completion and after final inspection by the MWRDGC.

The City must submit invoices for the representative percentage of construction within thirty (30) calendar days of meeting its respective completion percentage, through seventy-five percent (75%) completion, and within sixty (60) calendar days of final completion for the final reimbursement cost. The MWRDGC will only pay invoices submitted in strict accordance with the foregoing schedule. The MWRDGC may opt to not pay any late reimbursement request or invoices.

- 25. The MWRDGC's Maximum Reimbursement Amount under this Agreement is based on the funding amount that the MWRDGC's Board of Commissioners approved and appropriated for the calendar year in which the Agreement is executed. Any additional funding sought from the MWRDGC beyond that which was approved and appropriated for the initial calendar year is subject to the approval of the MWRDGC's Board of Commissioners.
- 26. The City is responsible for all other Project costs including engineering, property acquisition, other design-related costs, construction inspection, and the remainder of the construction cost that is not reimbursed by the MWRDGC.
- 27. As a condition for reimbursement, the City must submit copies of construction invoices to the MWRDGC for review along with the respective reimbursement requests.

Article 3. Permits and Fees

1. Federal, State, and County Requirements. The City will obtain all federal, state, county, and local permits required by law for the construction of the Project and will assume any costs in procuring said permits. Additionally, the City will obtain all consents and approvals required

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by federal, state, and county regulations for the construction of the Project and will assume any costs incurred in procuring all such consents and approvals.

 Operation and Maintenance. The City will obtain any and all permits necessary for the performance of any operations or maintenance work associated with the improvements to be constructed by the City in connection with the Project, and in accordance with Article 5 of this Agreement.

Article 4. Property Interests

- 1. If the Project site is located entirely within a right of way, perpetual easement, or on other property represented to be owned solely by and within the City, prior to execution of this Agreement, the City must have an enforceable property interest in the Project site and provide proof of that interest to the MWRDGC. If the Project site is situated entirely in a right of way, perpetual easement, or on other property owned solely by and within the City, and no proof of dedication, perpetual easement, or ownership is available, the City may request and submit the form affidavit from the MWRDGC, which must be executed by an authorized officer of the City. Acceptance of the affidavit is at the MWRDGC's discretion. Exhibit 10 appended to this Agreement contains the executed affidavit or, in the alternative, all relevant documentary evidence of dedication, perpetual easement, or ownership.
- 2. For all surrounding property impacting or being impacted by the Project, prior to starting construction of the Project, the City will acquire any temporary or permanent easements, license agreements, or fee simple title necessary, as determined by the City, for access to the Project site, as well as construction and maintenance of the Project. Any property interests acquired by the City must be consistent with the MWRDGC's right to access the Project to conduct an inspection or perform maintenance as set out in Article 5 of this Agreement.
- 3. Should acquisition of property interests via condemnation be necessary, the City will incur all associated costs, including purchase price and easement fees, as well as any attorney's fees. When necessary, the City will be required to provide relocation assistance consistent with the obligations of all applicable state and federal law.
- 4. If it is determined during the design and/or construction phases of the Project, as performed by the City, that hazardous substances are located in, on, or under the Project site, the City must notify the MWRDGC in writing within fourteen (14) calendar days of this information becoming available. Following notification, the City and the MWRDGC will meet to

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determine if it is appropriate for the Project to proceed. If the MWRDGC decides to proceed with the Project, the City will be responsible for all Project site remediation which must be performed consistent with all applicable state and federal law. If the City is unwilling or incapable of remediating the Project site, and no alternative plan is feasible, this Agreement will be terminated by the MWRDC.

- 5. The City will record all easements, licenses, or deeds acquired for the Project.
- 6. The City will own all the improvements constructed for the Project. Nothing in this Agreement creates an ownership or property interest for the MWRDGC in any part of the Project.
- 7. The City may not lease, sell, or transfer the property owned by the City that is part of the Project site or necessary for construction, maintenance, and access to the Project site, in whole or part, to a third-party during the term of the Agreement without the MWRDGC's prior written approval. The City must provide the MWRDGC with at least sixty (60) calendar days' written notice of the date on which it intends to execute a lease, sell, or transfer the property. Failure to comply with this Paragraph of the Agreement during the construction phase of the Project may result in termination by the MWRDGC pursuant to Article 8 of this Agreement and may require the City to return all or a portion of the funds received from the MWRDGC, at the MWRDGC's sole discretion. Alternatively, failure to comply with this Paragraph during the maintenance phase of the Project may result in the MWRDGC for the Project, at the MWRDGC's sole discretion.

Article 5. Maintenance

- The City, at its sole cost and expense, will maintain the Project in accordance with the O&M Plan, as shown in <u>Exhibit 9</u>, for at least fifty (50) years. and must ensure that the Project perpetually provides the intended Public Benefit or that the City replaces the Project with improvements that provide equal or greater stormwater benefit to the public.
- 2. The City must conduct annual inspections to ensure adequate maintenance of the Project in accordance with the O&M Plan. The City will prepare a report detailing its annual inspection, observations, and conclusions including whether the Project is operating as designed, functioning, and providing the intended Public Benefit. The annual inspection report must either be stamped by a Professional Engineer licensed by the State of Illinois or signed by the head of the department responsible for maintenance duties. The stamped or signed annual

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inspection report will be provided to the MWRDGC within thirty (30) calendar days of completion.

- 3. The MWRDGC will have the right (including any necessary right of access) to conduct its own annual inspection of the constructed Project upon reasonable notice to the City.
- 4. In the event of failure of the City to maintain the Project as described above to the satisfaction of the MWRDGC, the MWRDGC may issue written notice by certified, registered, or electronic mail to the City directing the City to perform such maintenance. If maintenance has not been accomplished on or before thirty (30) calendar days after such notice, the MWRDGC may cause such maintenance to be performed and the City will pay the MWRDGC the entire cost that the MWRDGC incurred to perform the required maintenance.
- 5. In addition to Paragraph 4 of this Article, if the MWRDGC determines that the City has failed to maintain the Project's improvements to provide the intended Public Benefit, the MWRDGC may require the City to repay some or all the funding that the MWRDGC provided under this Agreement. The amount of repayment is at the sole discretion of the MWRDGC. However, this paragraph shall not apply if, after fifty (50) years, the City replaces the Project with improvements that are deemed by the MWRDGC to have equal or greater Public Benefit.
- 6. In performing its obligations under this Article, the City will comply with all access restrictions and notice requirements set forth in the easements, licenses, or deeds recorded pursuant to Article 4 of this Agreement.

Article 6. Notification

- 1. Bid Advertisement. The City will provide the MWRDGC with thirty (30) calendar days' notice prior to Bid Advertisement for the Project.
- 2. Construction. The City will provide the MWRDGC with a construction schedule and a minimum of seventy-two (72) hours' notice before the following project milestones:
 - Start of work
 - Substantial completion
 - Completion of work

Article 7. Notification to Residents (Public Outreach)

The City shall notify the MWRDGC of its intent to hold any ceremonies, public outreach or educational events related to the Project (e.g. groundbreakings, ribbon cuttings, open houses,

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community fairs, etc.) at least two (2) weeks prior to the planned event date. The MWRDGC may provide materials or equipment to be used to assist the City in disseminating Project-related information at these events.

Article 8. Termination

- 1. Prior to commencement of construction of the Project, the City may, at its option, and upon giving notice to the MWRDGC in the manner provided in Article 25 of this Agreement, terminate this Agreement as it pertains to the entire Project. The City will return all Project-related funds received from the MWRDGC no later than fourteen (14) calendar days following its termination of the Agreement.
- 2. Prior to Bid Advertisement of the Project, the MWRDGC may, at its option, and upon giving notice to the City in the manner provided in Article 25 of this Agreement, terminate this Agreement as it pertains to the entire Project. The MWRDGC may also terminate this Agreement if: (a) the City does not award construction of the Project within one (1) year from the date of execution of the Agreement or (b) the Project is not completed in accordance with the Construction Documents within two (2) years of the City's initial award of a construction contract related to the Project. If the MWRDGC elects to terminate this Agreement based on expiration of the two (2) year completion period, then the City must return all funds provided by the MWRDGC within fourteen (14) calendar days of termination. In its sole discretion, the MWRDGC may approve an extension prior to the expiration of the one (1) year award period or two (2) years completion period for delays outside the City's control and where the City made good faith efforts to advance the Project, which approval will not be unreasonably withheld.
- 3. If, pursuant to Article 4 of this Agreement, the City is unwilling or incapable of remediating the Project site, and no alternative plan is feasible, this Agreement will be terminated by the MWRDGC. The MWRDGC will provide thirty (30) calendar days written notice to the City of intent to terminate. Any funds received by the City from the MWRDGC must be returned within thirty (30) calendar days of such termination.
- 4. If during the term of this Agreement, either Party fails to comply with any of the provisions contained in this Agreement, the other Party may seek to terminate this Agreement upon thirty (30) calendar days' written notice. Upon receiving written notice of desire to terminate, the Parties will commence discussion regarding conformance with the Agreement. If a resolution

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is reached, the Agreement will proceed. If no resolution is reached the Agreement will be deemed terminated. Within thirty (30) calendar days of such termination, all funds received from the MWRDGC will be returned, unless other arrangements are agreed upon in writing.

5. If it is determined that the City provided false, incorrect, or misleading information regarding the Project or the funding thereof, the MWRDGC may terminate this Agreement and require the City to return a portion or all of the Project-related funds received from the MWRDGC no later than fourteen (14) calendar days following termination of this Agreement. The determination as to whether the City has violated this Paragraph of the Agreement, and the amount of funds to be returned, is solely in the MWRDGC's discretion.

Article 9. Effective Date

This Agreement becomes effective on the date that the last signature is affixed to the signature pages.

Article 10. Duration

Subject to the terms and conditions of Article 8 of this Agreement, this Agreement will remain in full force and effect for perpetuity.

Article 11. Non-Assignment

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

Article 12. Waiver of Personal Liability

No official, employee, or agent of either Party to this Agreement will be charged personally by the other Party with any liability or expenses of defense incurred as a result of the exercise of any rights, privileges, or authority granted in this Agreement, nor will he or she be held personally liable under any term, provision, or paragraph of this Agreement, or because of a Party's execution or attempted execution of this Agreement, or because of any breach of this Agreement.

Article 13. Indemnification

The City will defend, indemnify, and release from liability the MWRDGC, its Commissioners, officers, employees, and other agents ("MWRDGC Parties") from liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorney fees and disbursements), claims, demands, actions, suits,

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proceedings, judgments, or settlements, any or all of which are asserted by any individual, private entity, or public entity against the MWRDGC Parties and arise out of or are in any way related to: (1) design, construction, operation, or maintenance of the Project that is the subject of this Agreement or (2) the exercise of any right, privilege, or authority granted to the City under this Agreement.

Article 14. Representations of the City

The City covenants, represents, and warrants as follows:

- 1. The City has full authority to execute, deliver, and perform or cause to be performed this Agreement; and
- 2. The individuals signing this Agreement and all other documents executed on behalf of the City are duly authorized to sign on behalf of and to bind the City; and
- 3. The execution and delivery of this Agreement, consummation of the transactions provided for in this Agreement, and the fulfillment of the terms will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the City or any instrument to which the City is bound or any judgment, decree, or order of any court, governmental body, or any applicable law, rule, or regulation; and
- 4. The funds allocated by the City for this Project are separate from and in addition to the funds that the MWRDGC will provide under this Agreement.

Article 15. Representations of the MWRDGC

The MWRDGC covenants, represents, and warrants as follows:

- 1. The MWRDGC has full authority to execute, deliver, and perform or cause to be performed this Agreement; and
- 2. The individuals signing this Agreement and all other documents executed on behalf of the MWRDGC are duly authorized to sign on behalf of and to bind the MWRDGC; and
- 3. The execution and delivery of this Agreement, consummation of the transactions provided for in this Agreement, and the fulfillment of its terms will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the MWRDGC or any instrument to which the MWRDGC is bound or any judgment, decree, or order of any court, governmental body, or any applicable law, rule, or regulation.

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Article 16. Disclaimers

This Agreement is not intended, nor will it be construed, to confer any rights, privileges, or authority not permitted by Illinois law. Nothing in this Agreement will be construed to establish a contractual relationship between the MWRDGC and any party other than the City.

Article 17. Waivers

Whenever a Party to this Agreement by proper authority waives the other Party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, will only apply to the particular instance and will not be deemed a waiver for subsequent instances of the performance, requirement, or condition. No such waiver will be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.

Article 18. Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The remaining provisions will remain in full force and will not be affected by the invalid, illegal, or unenforceable provision or by its severance. In lieu of such illegal, invalid, or unenforceable provision, there will 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 be legal, valid, and enforceable.

Article 19. Necessary Documents

Each Party agrees to execute and deliver all further documents, and take all further action reasonably necessary, to effectuate the purpose of this Agreement. Upon the completion of the Project, the City will provide the MWRDGC with a full-sized copy of "As-Built" drawings for the Project. The drawings will be affixed with the "As-Built" printed mark and must be signed by both the City resident engineer and the contractor.

Article 20. Compliance with Applicable Laws and Deemed Inclusion of Same

1. The Parties agree to observe and comply with all federal, state, and local laws, codes, and ordinances applicable to the Project. Provisions required (as of the effective date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed

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inserted in this Agreement whether or not they appear in this Agreement or, upon application by either Party, this Agreement will be amended to make the insertions. However, in no event will the failure to insert such provisions before or after this Agreement is signed prevent its enforcement.

- 2. The Parties to this Agreement will comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement, including the Equal Opportunity clause set forth in Appendix A to the Illinois Department of Human Rights' regulations, which is incorporated by reference in its entirety as though fully set forth in this Agreement.
- 3. The City agrees that it will ensure that all contractors and subcontractors that perform work on the Project are properly registered to transact business with the Illinois Secretary of State, are properly licensed for the work to be performed, and are properly insured at all times while performing work under this Agreement.

Article 21. Entire Agreement

This Agreement, and any exhibits or riders attached hereto, constitute the entire agreement between the Parties. No other warranties, inducements, considerations, promises, or interpretations may be implied that are not expressly set forth in this Agreement.

Article 22. Amendments

This Agreement will not be amended unless it is done so in writing and signed by the authorized representatives of both Parties.

Article 23. References to Documents

All references in this Agreement to any exhibit or document will be deemed to include all supplements and authorized amendments to any such exhibits or documents to which both Parties hereto are privy.

Article 24. Judicial and Administrative Remedies

 The Parties agree that this Agreement and any subsequent amendment will be governed by, and construed and enforced in accordance with the laws of the State of Illinois in all respects, including matters of construction, validity, and performance. The Parties further agree that the

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proper venue to resolve any dispute which may arise out of this Agreement is the appropriate court of competent jurisdiction located in Cook County, Illinois.

 The rights and remedies of the MWRDGC or the City will be cumulative, and election by the MWRDGC or the City of any single remedy will not constitute a waiver of any other remedy that such Party may pursue under this Agreement.

Article 25. Notices

- 1. Unless otherwise stated in this Agreement, all notices given in connection with this Agreement will be deemed adequately given only if in writing and addressed to the Party for whom such notices are intended at the address set forth in Article 26 of this Agreement. All notices will be sent by personal delivery, overnight messenger service, first class registered or certified mail with postage prepaid and return receipt requested, or by electronic mail. A written notice will be deemed to have been given to the recipient Party on the earlier of (a) the date it is handdelivered to the address required by this Agreement; (b) with respect to notices sent by overnight courier service, on the next business day following deposit with the overnight courier; (c) with respect to notices sent by mail, two (2) calendar days (excluding Sundays and federal holidays) following the date it is properly addressed and placed in the U.S. Mail, with proper postage prepaid; or (d) with respect to notices sent by electronic mail, on the date of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. In the heading of all notices, the Parties must identify the Project by stating as follows: "IGA between the City of Des Plaines and the MWRDGC for the Craig Manor Drainage System Improvements".
- 2. The Parties must address all notices referred to in this Agreement, or that either Party desires to give to the other, as set forth in Article 26 of this Agreement, unless otherwise specified and agreed to by the Parties.

Article 26. Representatives

 Immediately upon execution of this Agreement, the following individuals will represent the Parties as primary contacts and must receive notice in all matters under this Agreement.
 For MWRDGC: For the City: Director of Engineering Director of Public Works and Engineering

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Metropolitan Water Reclamation District of
Greater ChicagoCity of Des Plaines100 East Erie Street1420 Miner StreetChicago, Illinois 60611Des Plaines, Illinois 60016Phone: (312) 751-7905Phone: (847) 391-5390Email: oconnorc@mwrd.orgEmail: toakley@desplaines.org

With a copy to: Elrod Friedman LLP 325 N. LaSalle Street, Suite 450 Chicago, Illinois 60654 Attention: Peter M. Friedman, General Counsel

2. Each Party agrees to promptly notify the other Party of any change in its designated representative, and provide the new representative's name, address, telephone number, and electronic mail address.

Article 27. Interpretation and Execution

- 1. The Parties agree that this Agreement will not be construed against a Party by reason of who prepared it.
- 2. Each Party agrees to provide a certified copy of the ordinance, bylaw, or other authority demonstrating that the person(s) signing this Agreement is/are authorized to do so and that this Agreement is a valid and binding obligation of the Party.
- 3. The Parties will execute this Agreement in quadruplicate with original signatures, unless the Parties otherwise agree to execute electronically.

Article 28. Exhibits and Attachments

The following Exhibits are attached and incorporated into this Agreement, with amended versions attached, as applicable:

Exhibit 1:	Project Vicinity Map and Project Conceptual Drawing	
Exhibit 2:	The MWRDGC's Purchasing Act, 70 ILCS 2605/11.1-11.24	
Exhibit 3:	The MWRDGC's Multi-Project Labor Agreement (Cook County) with	
	Certificate of Compliance (effective date of October 6, 2017) ("MPLA")	
Exhibit 4:	Affirmative Action Ordinance, Revised Appendix D	
Exhibit 5:	Veteran's Business Enterprise Contracting Policy, Appendix V	

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Exhibit 6:MBE/WBE Utilization PlanExhibit 7:VBE Commitment FormExhibit 8:Affirmative Action Status ReportExhibit 9:Operation and Maintenance PlanExhibit 10:Project site property interest documents or Affidavit

The Metropolitan Water Reclamation District of Greater Chicago and the City of Des Plaines, have executed this Agreement, by their authorized officers, duly attested and their seals affixed, as of the date of the last signature affixed hereto.

City of Des Plaines

By:_____ Dorothy Wisniewski, City Manager

Date: _____

ATTEST:

Jessica Mastalski, City Clerk

Date: _____

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METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

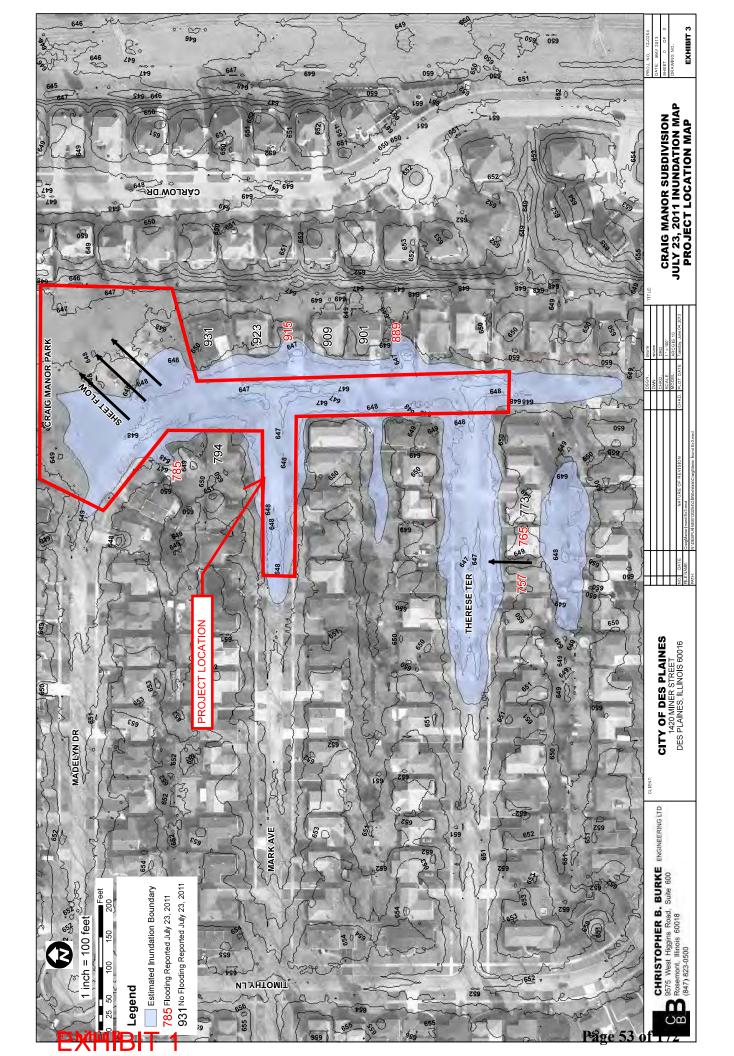
Chairman of the Committee on Finance	Date
Executive Director	Date
ATTEST:	
Clerk	Date
APPROVED AS TO ENGINEERING AND TE	CHNICAL MATTERS:
Director of Engineering	Date
APPROVED AS TO FORM AND LEGALITY:	
Head Assistant Attorney	Date

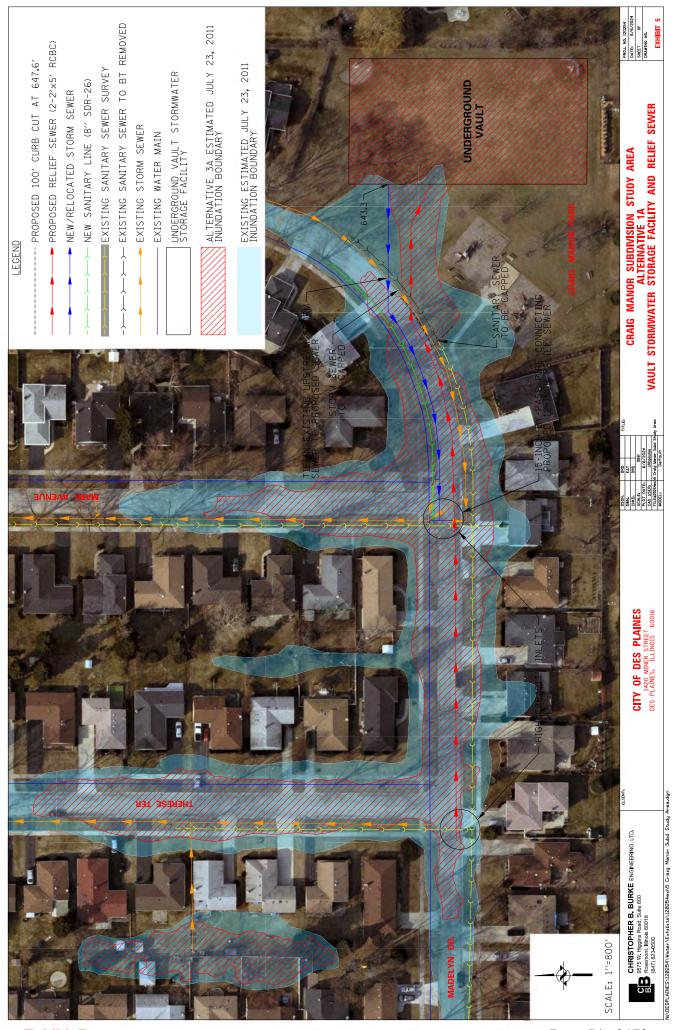
23-IGA-33

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EXHIBIT 1

PROJECT VICINITY MAP AND CONCEPTUAL DRAWING





EXIIIBIT 1

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EXHIBIT 2

MWRDGC'S PURCHASING ACT

(70 ILCS 2605/11.1) (from Ch. 42, par. 331.1) Sec. 11.1. Sections 11.1 through 11.24 of this amendatory Act of 1963 shall be known and may be cited as the "Purchasing Act for the Metropolitan Sanitary District of Greater Chicago." (Source: P.A. 82-1046.)

(70 ILCS 2605/11.2) (from Ch. 42, par. 331.2) Sec. 11.2. In addition to all the rights, powers, privileges, duties and obligations conferred thereon in "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as amended, the Metropolitan Sanitary District of Greater Chicago shall have the rights, powers and privileges and shall be subject to the duties and obligations conferred thereon by this amendatory Act of 1963. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.3) (from Ch. 42, par. 331.3) Sec. 11.3. Except as provided in Sections 11.4 and 11.5, all purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold and made by or on behalf of the sanitary district for labor, services or work, the purchase, lease or sale of personal property, materials, equipment or supplies, or the granting of any concession, shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder or to the highest responsible bidder, as the case may be, depending upon whether the sanitary district is to expend or receive money.

All such purchase orders or contracts which shall involve amounts that will not exceed the mandatory competitive bid threshold, shall also be let in the manner prescribed above whenever practicable, except that after solicitation of bids, such purchase orders or contracts may be let in the open market, in a manner calculated to insure the best interests of the public. The provisions of this section are subject to any contrary provisions contained in "An Act concerning the use of Illinois mined coal in certain plants and institutions", filed July 13, 1937, as heretofore and hereafter amended. For purposes of this Section, the "mandatory competitive bid threshold" is a dollar amount equal to 0.1% of the total general fixed assets of the district as reported in the most recent required audit report. In no event, however, shall the mandatory competitive bid threshold dollar amount be less than \$10,000 or more than \$40,000.

Notwithstanding the provisions of this Section, the sanitary district is expressly authorized to establish such procedures as it deems appropriate to comply with state or federal regulations as to affirmative action and the utilization of small and minority businesses in construction

and procurement contracts. (Source: P.A. 92-195, eff. 1-1-02.)

(70 ILCS 2605/11.4) (from Ch. 42, par. 331.4)

Sec. 11.4. Contracts which by their nature are not adapted to award by competitive bidding, such as, but not only, contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, contracts for the purchase or sale of utilities and contracts for materials economically procurable only from a single source of supply and leases of real property where the sanitary district is the lessee shall not be subject to the competitive bidding requirements of this Act. The sanitary district is expressly authorized to procure from any federal, state or local governmental unit or agency such surplus materials, as may be made available without conforming to the competitive bidding requirements of this Act. Regular employment contracts, whether classified in civil service or not, shall not be subject to the competitive bidding requirements of this Act. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.5) (from Ch. 42, par. 331.5)

Sec. 11.5. In the event of an emergency affecting the public health or safety, so declared by action of the board of trustees, which declaration shall describe the nature of the injurious effect upon the public health or safety, contracts may be let to the extent necessary to resolve such emergency without public advertisement. The declaration shall fix the date upon which such emergency shall terminate. The date may be extended or abridged by the board of trustees as in its judgment the circumstances require.

The executive director appointed in accordance with Section 4 of this Act shall authorize in writing and certify to the director of procurement and materials management those officials or employees of the several departments of the sanitary district who may purchase in the open market without filing a requisition or estimate therefor, and without advertisement, any supplies, materials, equipment or services, for immediate delivery to meet bona fide operating emergencies where the amount thereof is not in excess of \$50,000; provided, that the director of procurement and materials management shall be notified of such emergency. A full written account of any such emergency together with a requisition for the materials, supplies, equipment or services required therefor shall be submitted immediately by the requisitioning agent to the executive director and such report and requisition shall be submitted to the director of procurement and materials management and shall be open to public inspection for a period of at least one year subsequent to the

date of such emergency purchase. The exercise of authority in respect to purchases for such bona fide operating emergencies shall not be dependent upon a declaration of emergency by the board of trustees under the first paragraph of this Section. (Source: P.A. 95-923, eff. 1-1-09; 96-165, eff. 8-10-09.)

(70 ILCS 2605/11.6) (from Ch. 42, par. 331.6)

Sec. 11.6. The head of each department shall notify the director of procurement and materials management of those officers and employees authorized to sign requests for purchases. Requests for purchases shall be void unless executed by an authorized officer or employee and approved by the director of procurement and materials management. Requests for purchases may be executed, approved and signed manually or electronically.

Officials and employees making requests for purchases shall not split or otherwise partition for the purpose of evading the competitive bidding requirements of this Act, any undertaking involving amounts in excess of the mandatory competitive bid threshold. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.7) (from Ch. 42, par. 331.7)

Sec. 11.7. All proposals to award purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold shall be published at least 12 calendar days in advance of the date announced for the receiving of bids, in a secular English language newspaper of general circulation in said sanitary district and shall be posted simultaneously on readily accessible bulletin boards in the principal office of the sanitary district. Nothing contained in this section shall be construed to prohibit the placing of additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail either in the advertisement itself or by reference to plans, specifications or other detail on file at the time of publication of the first announcement, to enable the bidders to know what their obligation will be. The advertisement shall also state the date, time and place assigned for the opening of bids. No bids shall be received at any time subsequent to the time indicated in the announcement; however, an extension of time may be granted for the opening of such bids upon publication in the same newspaper of general circulation in said sanitary district stating the date to which bid opening has been extended. The time of the extended bid opening shall not be less than 5 days after publication, Sundays and legal holidays excluded.

Cash, cashier's check or a certified check payable to the clerk and drawn upon a bank, as a deposit of good faith, in a

reasonable amount not in excess of 10% of the contract amount, may be required of each bidder by the director of procurement and materials management on all bids involving amounts in excess of the mandatory competitive bid threshold. If a deposit is required, the advertisement for bids shall so specify. Instead of a deposit, the director of procurement and materials management may allow the use of a bid bond if the bond is issued by a surety company that is listed in the Federal Register and is authorized to do business in the State of Illinois.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.8) (from Ch. 42, par. 331.8)

Sec. 11.8. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidder void. Each bidder shall accompany his bid with a sworn statement, or otherwise swear or affirm, that he has not been a party to any such agreement or collusion. Any disclosure in advance of the opening of bids, on the terms of the bids submitted in response to an advertisement, made or permitted by the director of procurement and materials management or any officer or employee of said sanitary district shall render the proceedings void and shall require re-advertisement and re-award. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.9) (from Ch. 42, par. 331.9) Sec. 11.9. All sealed bids shall be publicly opened by the director of procurement and materials management, or his designee, and such bids shall be open to public inspection for a period of at least 48 hours before award is made; provided, this provision shall not apply to the sale of bonds, tax anticipation warrants or other financial obligations of the sanitary district. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.10) (from Ch. 42, par. 331.10) Sec. 11.10. Every contract or purchase order involving amounts in excess of the mandatory competitive bid threshold shall be signed by the president or other duly authorized officer of the board of commissioners, by the executive director, by the clerk and by the director of procurement and materials management. Each bid with the name of the bidder shall be entered upon a record which shall be open to public inspection in the office of the director of procurement and

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materials management. After the award is made, the bids shall be entered in the official records of the board of commissioners.

All purchase orders or contracts involving amounts that will not exceed the mandatory competitive bid threshold shall be let by the director of procurement and materials management. They shall be signed by the director of procurement and materials management and the clerk. All records pertaining to such awards shall be open to public inspection for a period of at least one year subsequent to the date of the award.

An official copy of each awarded purchase order or contract together with all necessary attachments thereto, including assignments and written consent of the director of procurement and materials management shall be retained by the director of procurement and materials management in an appropriate file open to the public for such period of time after termination of contract during which action against the municipality might ensue under applicable laws of limitation. Certified copies of all completed contracts and purchase orders shall be filed with the clerk. After the appropriate period, purchase orders, contracts and attachments in the clerk's possession may be destroyed by direction of the director of procurement and materials management.

The provisions of this Act are not applicable to joint purchases of personal property, supplies and services made by governmental units in accordance with Sections 1 through 5 of "An Act authorizing certain governmental units to purchase personal property, supplies and services jointly," approved August 15, 1961.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.11) (from Ch. 42, par. 331.11) Sec. 11.11. In determining the responsibility of any bidder, the director of procurement and materials management may take into account, in addition to financial responsibility, past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specific time and other pertinent factors, including but not limited to whether the equipment or material is manufactured in North America. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.12) (from Ch. 42, par. 331.12) Sec. 11.12. Any and all bids received in response to an advertisement may be rejected by the director of procurement and materials management if the bidders are not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor do not conform to requirements, or if the public interest may be better served

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thereby. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.13) (from Ch. 42, par. 331.13)

Sec. 11.13. Bond, with sufficient sureties, in such amount as shall be deemed adequate by the director of procurement and materials management not only to insure performance of the contract in the time and manner specified in said contract but also to save, indemnify and keep harmless the sanitary district against all liabilities, judgments, costs and expenses which may in anywise accrue against said sanitary district in consequence of the granting of the contract or execution thereof shall be required for all contracts relative to construction, rehabilitation or repair of any of the works of the sanitary district and may be required of each bidder upon all other contracts in excess of the mandatory competitive bid threshold when, in the opinion of the director of procurement and materials management, the public interest will be better served thereby.

In accordance with the provisions of "An Act in relation to bonds of contractors entering into contracts for public construction", approved June 20, 1931, as amended, all contracts for construction work, to which the sanitary district is a party, shall require that the contractor furnish bond guaranteeing payment for materials and labor utilized in the contract.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.14) (from Ch. 42, par. 331.14) Sec. 11.14. No contract to which the sanitary district is a party shall be assigned by the successful bidder without the written consent of the director of procurement and materials management. In no event shall a contract or any part thereof be assigned to a bidder who has been declared not to be a responsible bidder in the consideration of bids submitted upon the particular contract.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.15) (from Ch. 42, par. 331.15) Sec. 11.15. No person shall be employed upon contracts for work to be done by any such sanitary district unless he or she is a citizen of the United States, a national of the United States under Section 1401 of Title 8 of the United States Code, an alien lawfully admitted for permanent residence under Section 1101 of Title 8 of the United States Code, an individual who has been granted asylum under Section 1158 of

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Title 8 of the United States Code, or an individual who is otherwise legally authorized to work in the United States. (Source: P.A. 98-280, eff. 8-9-13; 99-231, eff. 8-3-15.)

(70 ILCS 2605/11.16) (from Ch. 42, par. 331.16)

Sec. 11.16. The executive director, with the advice and consent of the board of trustees, shall appoint the director of procurement and materials management. Any person appointed as the director of procurement and materials management must have served at least 5 years in a responsible executive capacity requiring knowledge and experience in large scale purchasing activities.

In making the appointment, the president shall appoint an advisory committee consisting of 5 persons, one of whom shall be the executive director, which advisory board shall submit not fewer than 3 names to the general superintendent for the appointment. The executive director shall make the appointment from nominees submitted by the Advisory Committee after giving due consideration to each nominee's executive experience and his ability to properly and effectively discharge the duties of the director of procurement and materials management.

The director of procurement and materials management may be removed for cause by the executive director. He is entitled to a public hearing before the executive director prior to such anticipated removal. The director of procurement and materials management is entitled to counsel of his own choice. The executive director shall notify the board of trustees of the date, time, place and nature of each hearing and he shall invite the board to appear at each hearing. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.17) (from Ch. 42, par. 331.17) Sec. 11.17. Powers of director of procurement and materials management. The director of procurement and materials management shall: (a) adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office; (b) constitute the agent of the sanitary district in contracting for labor, materials, services, or work, the purchase, lease or sale of personal property, materials, equipment or supplies in conformity with this Act; (c) open all sealed bids; (d) determine the lowest or highest responsible bidder, as the case may be; (e) enforce written specifications describing standards established pursuant to this Act; (f) operate or require such physical, chemical or other tests as may be necessary to insure conformity to such specifications with respect to quality of materials; (q) exercise or require such control as may be necessary to insure conformity to contract provisions with respect to quantity; (h) distribute or cause to be distributed, to the various requisitioning agencies of such

sanitary district such supplies, materials or equipment, as may be purchased by him; (i) transfer materials, supplies, and equipment to or between the various requisitioning agencies and to trade in, sell, donate, or dispose of any materials, supplies, or equipment that may become surplus, obsolete, or unusable; except that materials, supplies, and equipment may be donated only to not-for-profit institutions; (j) control and maintain adequate inventories and inventory records of all stocks of materials, supplies and equipment of common usage contained in any central or principal storeroom, stockyard or warehouse of the sanitary district; (k) assume such related activities as may be assigned to him from time to time by the board of trustees; and (m) submit to the board of trustees an annual report describing the activities of his office. The report shall be placed upon the official records of the sanitary district or given comparable public distribution. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.18) (from Ch. 42, par. 331.18) Sec. 11.18. The board of trustees is expressly authorized to establish a revolving fund to enable the director of procurement and materials management to purchase items of common usage in advance of immediate need. The revolving fund shall be reimbursed from appropriations of the using agencies. No officer or employee of a sanitary district organized pursuant to this Act shall be financially interested, directly or indirectly, in any bid, purchase order, lease or contract to which such sanitary district is a party. For purposes of this Section an officer or employee of the sanitary district is deemed to have a direct financial interest in a bid, purchase order, lease or contract with the district, if the officer or employee is employed by the district and is simultaneously employed by a person or corporation that is a party to any bid, purchase order, lease or contract with the sanitary district.

Any officer or employee convicted of a violation of this section shall forfeit his office or employment and in addition shall be guilty of a Class 4 felony. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.19) (from Ch. 42, par. 331.19) Sec. 11.19. No department, office, agency or instrumentality, officer or employe of the sanitary district, shall be empowered to execute any purchase order or contract except as expressly authorized by this Act. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.19a) (from Ch. 42, par. 331.19a) Sec. 11.19a. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly. (Source: P.A. 84-731.)

(70 ILCS 2605/11.20) (from Ch. 42, par. 331.20)

Sec. 11.20. There shall be a board of standardization, composed of the director of procurement and materials management of the sanitary district who shall be chairman, and 4 other members who shall be appointed by the president of the board of trustees of the sanitary district. The members shall be responsible heads of a major office or department of the sanitary district and shall receive no compensation for their services on the board. The board shall meet at least once each 3 calendar months upon notification by the chairman at least 5 days in advance of the date announced for such meeting. Official action of the board shall require the vote of a majority of all members of the board. The chairman shall cause to be prepared a report describing the proceedings of each meeting. The report shall be transmitted to each member and shall be made available to the president and board of trustees of such sanitary district within 5 days subsequent to the date of the meeting and all such reports shall be open to public inspection, excluding Sundays and legal holidays.

The board of standardization shall: (a) classify the requirements of the sanitary district, including the departments, offices and other boards thereof, with respect to supplies, materials and equipment; (b) adopt as standards, the smallest numbers of the various qualities, sizes and varieties of such supplies, materials and equipment as may be consistent with the efficient operation of the sanitary district; and (c) prepare, adopt, promulgate, and from time to time revise, written specifications describing such standards.

Specifications describing in detail the physical, chemical and other characteristics of supplies, material or equipment to be acquired by purchase order or contract shall be prepared by the board of standardization. However, all specifications pertaining to the construction, alteration, rehabilitation or repair of any real property of such sanitary district shall be prepared by the engineering agency engaged in the design of such construction, alteration, rehabilitation or repair, prior to approval by the director of procurement and materials management. The specification shall form a part of the purchase order or contract, and the performance of all such contracts shall be supervised by the engineering agency designated in the contracts.

In the preparation or revision of standard specifications the board of standardization shall solicit the advice, assistance and cooperation of the several requisitioning agencies and shall be empowered to consult such public or nonpublic laboratory or technical services as may be deemed expedient. After adoption, each standard specification shall,

until rescinded, apply alike in terms and effect to every purchase order or contract for the purchase of any commodity, material, supply or equipment. The specifications shall be made available to the public upon request. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.21) (from Ch. 42, par. 331.21) Sec. 11.21. Official ordinances authorized by this Act shall be adopted by formal action of the board of trustees of the sanitary district and shall be published for the information of the public. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.22) (from Ch. 42, par. 331.22) Sec. 11.22. Any purchase order or contract executed in violation of this Act shall be null and void. Public funds which have been expended thereon, may be recovered in the name of the sanitary district in any court of competent jurisdiction. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.23) (from Ch. 42, par. 331.23) Sec. 11.23. The comptroller of the sanitary district shall conduct audits of all expenditures incident to all purchase orders and contracts awarded by the director of procurement and materials management. The comptroller shall report the results of such audits to the president and board of trustees. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.24) (from Ch. 42, par. 331.24) Sec. 11.24. (a) A person or business entity shall be disqualified from doing business with The Metropolitan Sanitary District of Greater Chicago for a period of 5 years from the date of conviction or entry of a plea or admission of guilt, if that person or business entity:

1. has been convicted of an act of bribery or attempting to bribe an officer or employee of the federal government or of a unit of any state or local government or school district in that officer's or employee's official capacity; or

2. has been convicted of an act of bid-rigging or attempting to rig bids as defined in the Federal Sherman Anti-Trust Act and Clayton Act; or

3. has been convicted of bid-rigging or attempting to rig bids under the laws of the State of Illinois or any other state; or

4. has been convicted of an act of price-fixing or attempting to fix prices as defined by the Federal Sherman Anti-Trust Act and Clayton Act; or

5. has been convicted of price-fixing or attempting to fix prices under the laws of the State of Illinois or any other state; or

6. has been convicted of defrauding or attempting to defraud the Federal government or a unit of any state or local government or school district; or

7. has made an admission of guilt of such conduct as set forth in subsections 1 through 6 above, which admission is a matter of record, whether or not such person or business entity was subject to prosecution for the offense or offenses admitted to; or

8. has entered a plea of nolo contendere to charges of bribery, price-fixing, bid-rigging, or fraud as set forth in subsections 1 through 6 above.

(b) "Business entity" as used in this section means a corporation, partnership, trust, association, unincorporated business or individually owned business.

(c) A business entity shall be disqualified if the following persons are convicted of, have made an admission of guilt, or enter a plea of nolo contendere to a disqualifying act described in paragraph (a), subsections 1 through 6, regardless of whether or not the disqualifying act was committed on behalf or for the benefit of such business entity:

(1) a person owning or controlling, directly or indirectly, 20% or more of its outstanding shares; or

(2) a member of its board of directors; or

(3) an agent, officer or employee of such business entity.

(d) Disqualification Procedure. After bids are received, whether in response to a solicitation for bids or public advertising for bids, if it shall come to the attention of the director of procurement and materials management that a bidder has been convicted, made an admission of guilt, a plea of nolo contendere, or otherwise falls within one or more of the categories set forth in paragraphs (a), (b) or (c) of this Section, the director of procurement and materials management shall notify the bidder by certified mail, return receipt requested, that such bidder is disqualified from doing business with the Sanitary District. The notice shall specify the reasons for disqualification.

(e) Review Board. A review board consisting of 3 individuals shall be appointed by the Executive Director of the Sanitary District. The board shall select a chairman from its own members. A majority of the members shall constitute a quorum and all matters coming before the board shall be determined by a majority. All members of the review board shall serve without compensation, but shall be reimbursed actual expenses.

(f) Review. The director of procurement and materials management's determination of disqualification shall be final

as of the date of the notice of disqualification unless, within 10 calendar days thereafter, the disqualified bidder files with the director of procurement and materials management a notice of appeal. The notice of appeal shall specify the exceptions to the director of procurement and materials management's determination and shall include a request for a hearing, if one is desired. Upon receipt of the notice of appeal, the director of procurement and materials management shall provide a copy to each member of the review board. If the notice does not contain a request for a hearing, the director of procurement and materials management may request one within 5 days after receipt of the notice of appeal. If a hearing is not requested, the review board may, but need not, hold a hearing.

If a hearing is not requested, the review board, unless it decides to hold a hearing, shall review the notice of disqualification, the notice of appeal and any other supporting documents which may be filed by either party. Within 15 days after the notice of appeal is filed, the review board shall either affirm or reverse the director of procurement and materials management's determination of disqualification and shall transmit a copy to each party by certified mail, return receipt requested.

If there is a hearing, the hearing shall commence within 15 days after the filing of the notice of appeal. A notice of hearing shall be transmitted to the director of procurement and materials management and the disqualified bidder not later than 12 calendar days prior to the hearing date, by certified mail, return receipt requested.

Evidence shall be limited to the factual issues involved. Either party may present evidence and persons with relevant information may testify, under oath, before a certified reporter. Strict rules of evidence shall not apply to the proceedings, but the review board shall strive to elicit the facts fully and in credible form. The disqualified bidder may be represented by an attorney.

Within 10 calendar days after the conclusion of the hearing, the review board shall make a finding as to whether or not the reasons given in the director of procurement and materials management's notice of disqualification apply to the bidder, and an appropriate order shall be entered. A copy of the order shall be transmitted to the director of procurement and materials management and the bidder by certified mail, return receipt requested.

(g) All final decisions of the review board shall be subject to review under the Administrative Review Law.

(h) Notwithstanding any other provision of this section to the contrary, the Sanitary District may do business with any person or business entity when it is determined by the director of procurement and materials management to be in the best interest of the Sanitary District, such as, but not limited to contracts for materials or services economically procurable only from a single source. (Source: P.A. 95-923, eff. 1-1-09.) EXHIBIT 3

MWRDGC'S MULTI-PROJECT LABOR AGREEMENT (MPLA)

MULTI-PROJECT LABOR AGREEMENT (COOK COUNTY)

With

CERTIFICATE OF COMPLIANCE

CONTAINS:

1) MPLA - EFFECTIVE OCTOBER 6, 2017

2) CERTIFICATE OF COMPLIANCE

GENERAL REQUIREMENTS UNDER THE MULTI-PROJECT LABOR AGREEMENT

The following is a brief summary of a Bidder's responsibilities under the MPLA. Please refer to the terms of the MPLA for a full and complete statement of its requirements.

Your firm is required to complete the Certificate of Compliance indicating that your firm intends to comply with the Multi-Project Labor Agreement. The Certificate of Compliance must be signed by an authorized Officer of the firm. This may be submitted with the bid or prior to award of contract. To be eligible for award, your firm must comply with the Multi-Project Labor Agreement and sign the certificate. Failure of the Bidder to comply with the MPLA will result in a rejection of the bid, and possible retention of the bid deposit. Compliance with the MPLA, is as follows:

If the Bidder or any other entity performing work under the contract is not already signatory to a current collective bargaining agreement with a union or labor organization affiliated with the AFL-CIO Building Trades Department and the Chicago and Cook County Building and Construction Trades Council, or their affiliates which have jurisdiction over the work to be performed pursuant to this Contract, (hereafter referred to as a "participating trade group") it must become a member.

Note: The MPLA is not applicable when the performance of work is outside Cook County, Illinois, or if repair and maintenance work on equipment is performed at a Bidder's facility.

Revised October 2017

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO MULTI-PROJECT LABOR AGREEMENT FOR COOK COUNTY

This Multi-Project Labor Agreement ("Agreement") is entered into by and between the Metropolitan Water Reclamation District of Greater Chicago ("MWRD" or "District"), a public body, as Owner, in its proper capacity, on behalf of itself and each of its contractors and subcontractors of whatever tier ("Contractors") and shall be applicable to Construction Work on Covered Projects, both defined herein, to be performed by the District's Contractors along with each of the undersigned labor organizations signatory to the Chicago and Cook County Building and Construction Trades Council and, as appropriate, the Teamsters Joint Council No. 25, or their affiliates who become signatory hereto (collectively "Union(s)").

This Agreement is entered into in accordance with all applicable local state and federal laws. The District recognizes the public interest in timely construction and labor stability.

WHEREAS, MWRD is responsible for the actual construction, demolition, rehabilitation, deconstruction, and/or renovation work ("Construction Work") of projects overseen by MWRD in the geographical boundaries of Cook County. All of the District's Construction Work within those boundaries ("Covered Projects") will be recognized as covered under the terms of this Agreement regardless of the source of the Funds for the Project. Due to the size, scope, cost, timing, and duration of the multitude of Covered Projects traditionally performed by MWRD, the Parties to this Agreement have determined that it is in their interests to have these Covered Projects completed in the most productive, economical, and orderly manner possible and without labor disruptions of any kind that might interfere with, or delay, any of said Covered Projects; and

WHEREAS, the Parties have determined that it is desirable to eliminate the potential for friction and disruption of these Covered Projects by using their best efforts to ensure that all Construction Work is performed by the Unions that are signatory hereto and which have traditionally performed and have trade and geographic jurisdiction over such work regardless of the source of the Funds for the Project. Experience has proven the value of such cooperation and mutual undertakings; and

WHEREAS, the Parties acknowledge that the District is not to be considered an employer of any employee of any Contractor covered under this Agreement, and the District acknowledges that it has a serious and ongoing concern regarding labor relations associated with its Covered Projects, irrespective of the existence of a collective bargaining relationship with any of the signatory Unions.

NOW THEREFORE, in order to further these goals and objectives and to maintain a spirit of harmony, labor-management cooperation, and stability, the Parties agree as follows:

1. During the term of this Agreement, MWRD shall neither contract, nor permit any other person, firm, company, or entity to contract or subcontract for any Construction Work on any Covered Project under this Agreement, unless such work is performed by a person, firm, or company signatory, or willing to become signatory, to the current applicable area-wide collective bargaining agreement(s) with the appropriate trade/craft Union(s) affiliated with the Chicago & Cook County Building & Construction Trades Council or, as appropriate, the Teamsters' Joint Council No. 25. Copies of all applicable, current collective bargaining agreements constitute Appendix A of this Agreement, attached hereto and made an integral part hereof, and as may be modified from time to time during the term of this Agreement.

Said provisions of this Agreement shall be included in all advertised contracts, excluding non-Construction Work, and shall be explicitly included in all contracts or subcontracts of whatsoever tier by all Contractors on Covered Projects.

a. The Parties agree that the repair of heavy equipment, thermographic inspection, and landscaping shall be defined and/or designated as Construction Work on all Covered Projects.
b. The Unions acknowledge that some preassembled or prefabricated equipment and material will be used on Covered Projects. To the extent consistent with existing collective bargaining agreements and applicable law, there will be no refusal by the Unions to handle, transport, install, or connect such equipment or materials. Further, equipment and material procured from sources outside of the geographic boundaries of Cook County may be delivered by independent cargo, haulers, rail, ship and/or truck drivers and such delivery will be made without any disruption as the District will request its Contractors to request Union-affiliate employees to make deliveries to the Covered Project sites.

c. Notwithstanding anything to the contrary herein, the terms of this Agreement shall not apply to work performed at the Contractor's facility for repair and maintenance of equipment or where repair, maintenance, or inspection services are done by highly-skilled technicians trained in servicing equipment, unless otherwise provided by the relevant collective bargaining agreement.

d. Nothing herein shall prohibit or otherwise affect the District's right to cancel or otherwise terminate a contract.

e. A pre-construction meeting attended by representatives of the District, the Contractors, and Unions shall be scheduled for a date prior to commencement of a Covered Project. The nature of the project, the May 15, 2017 Covered Construction Work, the work assignments, and any other matters of mutual interest will be discussed. All parties participating in the pre-job conferences shall sign a pre-job-sign-in sheet. During the pre-job conference, or shortly thereafter, and before the commencement of the project, the contactor or subcontractor shall ensure that there has been submitted to the District a letter of good standing for the applicable trades explaining that the contractor or subcontractor is not delinquent with respect to any dues owed to the appropriate labor organization or with respect to any fringe contributions owed to the appropriate fringe benefit fund(s). If a union or fringe benefit fund does not produce a letter of good standing within seven (7) days after a request is made no such letter of good standing shall be required for that particular trade.

f. The Unions agree to reasonably cooperate with the MWRD and Contractors In order to assist them in achieving the Worker Percentage Participation goals as defined in subsection (1) and (2) below. The Worker Percentage Participation goals are governed by federal requirements regarding federal construction contracts. To the extent these federal worker percentage participation goals are modified in the future, such modifications will automatically apply:

 19.6% of the total aggregate of construction hours worked by employees of contractors and their subcontractors will be performed by African-American, Hispanic, Native American, Asian-Pacific, and Subcontinent Asian American workers.
 6.9% of the total aggregate of construction hours worked by employees of the contractors and their subcontractors will be performed by female workers.

MPLA-CC-04

Exhibit B

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2. A contractor or subcontractor which is a successful bidder with respect to Covered Projects, but which is not signatory to the applicable area-wide collective bargaining agreements incorporated herein, shall be required to execute such applicable area-wide collective bargaining agreements within seven (7) days of being designated a successful bidder. If such an agreement is not executed within that time period, said contractor or subcontractor will be disqualified. In no event shall a contractor or subcontractor or subcontractor be required to sign any of the applicable agreements constituting Appendix A if the contractor or subcontractor does not employ the trade covered by the applicable Appendix A contract.

3. During the term of this Agreement, no Union signatory hereto nor any of its members, officers, stewards, agents, representatives, nor any employee, shall instigate, authorize, support, sanction, maintain, or participate in any strike walkout, work stoppage, work slowdown, work curtailment, cessation, or interruption of production, or in any picketing of any Covered Project site covered by this Agreement for any reason whatsoever, including, but not limited to, the expiration of any collective bargaining agreement referred to in Appendix A, a dispute between the Parties and any Union or employee, or as a show of support or sympathy for any other Union employee or any other group. In the event of an economic strike or other job action upon the termination of an existing collective bargaining agreement, no adverse job action shall be directed against any Covered Project sites. All provisions of any subsequently negotiated collective bargaining agreement shall be retroactive for all employees working on the Covered Project.

4. Each Union signatory hereto agrees that it will use its best efforts to prevent any of the acts forbidden in Paragraph 4, and that in the event any such act takes place or is engaged in by any employee or group of employees, each Union signatory hereto further agrees that it will use its best efforts (including its full disciplinary power under its Constitution and/or By-Laws) to cause an immediate cessation thereof. Each union also agrees that if any union, individual or group of employees on covered projects engages in any handbilling, picketing, strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption, the other unions will consider such picketing or other work action as unauthorized and will refuse to honor any picket line established and the unions further agree to instruct their members to cross such unauthorized lines. Fallure of any union or groups of employees to cross such unauthorized picket lines on any covered project shall be a violation of this agreement.

5. Any Contractor signatory or otherwise bound, stipulated to, or required to abide by any provisions of this Agreement may implement reasonable project rules and regulations, and these rules and regulations shall be distributed to all employees on the Covered Project. Provided, however, that such rules and regulations shall not be inconsistent with the terms of this Agreement or any applicable area-wide collective bargaining agreement. Any Contractor shall have the right to discharge or discipline its Union employees who violate the provisions of this Agreement or any Covered Project's rules and regulations. Such discharge or discipline by a Contractor shall be subject to the Grievance/ Arbitration procedure of the applicable area-wide collective bargaining agreement. If such fact is established, the penalty imposed shall not be subject to review or disturbed. Construction Work at any Covered Project site under this Agreement shall continue without disruption or hindrance of any kind during any Grievance/Arbitration procedure.

3

6. The Unions understand and acknowledge that the District's Contractors are responsible to perform Construction Work as required by the District. The Contractors have complete authority to do the following, subject to District approval, if required, and if consistent with the terms of the collective bargaining agreements attached hereto:

a. Plan, direct, and control the operations of all work;

b. Hire and lay off employees as the Contractor deems appropriate to meet work requirements;

c. Determine work methods and procedures;

d. Determine the need and number of foremen;

e. Require all employees to observe Contractor and/or District rules and regulations;

f. Require all employees to work safely and observe all safety regulations prescribed by the Contractor and/or the District; and

g. Discharge, suspend, or discipline employees for proper cause.

h. Abide by the rules set forth in each respective Trade Unions' Collectively Bargained Agreement pertaining to apprentice to journeymen ratios.

7. Nothing in the foregoing shall prohibit or restrict any Party from otherwise judicially enforcing any provision of its collective bargaining agreement between any Union and a Contractor with whom it has a collective bargaining relationship.

8. This Agreement shall be incorporated into all advertised contract documents after the Board of Commissioners adopts and ratifies this Agreement.

9. The term of this Agreement shall be five (5) years and shall be automatically extended from year to year unless the District or the Council issues a written notice to terminate prior to ninety (90) days in advance of any expiration. Any Covered Project commenced during and/or covered by the terms of this Agreement shall continue to be covered by its terms until the final completion and acceptance of the Covered Project by the District.

10. In the event a dispute shall arise between a contractor or subcontractor any signatory union and/or fringe benefit fund as to the obligation and/or payment of fringe benefits provided for under the appropriate Collective Bargaining Agreement, upon notice to the District by the appropriate union signatory hereto of a claim for such benefits, the District shall forward such notification to the surety upon the contract, and to the general contractor.

11. In the event of a jurisdictional dispute by and between any Unions, such Unions shall take all steps necessary to promptly resolve the dispute. In the event of a dispute relating to trade or work jurisdiction, Parties, including Contractors, consent to and agree that a final and binding resolution of the dispute shall be achieved in accordance with the terms of paragraph nine of the Joint Conference Board Standard Agreement between the Chicago & Cook County Building Trades Council and the Construction Employers' Association, attached hereto as Appendix B, and as may be modified from time to time during the term of this Agreement.

MPLA-CC-06

12. This Agreement shall be incorporated into and become a part of the collective bargaining agreements between the Unions signatory hereto and Contractors and their subcontractors. In the event of any inconsistency between this Agreement and any collective bargaining agreement, the terms of this Agreement shall supersede and prevail. In the event of any inconsistency between this Agreement, the terms of this Agreement and any collective bargaining agreement, the terms of this Agreement and any collective bargaining agreement, the terms of this Agreement shall supersede and prevail except for all work performed under the NTP Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instruction calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for instrument and Control systems Technicians, and the National Agreement of the International Union of Elevator Contractors with the exception of the content and subject matter of Article V, VI, and VII of the AFL-CIO's Building & Construction Trades Department model Project Labor Agreement.

13. The Parties agree that in the implementation and administration of this Agreement, it is vitally necessary to maintain effective and immediate communication so as to minimize the potential of labor relations disputes arising out of this Agreement. To that end, each Party hereto agrees to designate, in writing, a representative to whom problems which arise during the term of this Agreement may be directed. Within forty-eight (48) hours after notice of the existence of any problem, a representative of each Party shall meet to discuss and, where possible, resolve such problems. The representative of the Unions shall be President of the Chicago & Cook County Building & Construction Trades Council or his/her designee. The representative of MWRD shall be the District's Assistant Director of Engineering, Construction Division or his/her designee.

14. The District and the Contractors agree that the applicable substance abuse policy (i.e., drug, alcohol, etc.) on any Covered Project shall be that as contained or otherwise provided for in the relevant areawide collective bargaining agreements attached as Appendix A to this Agreement. Nothing in the foregoing shall limit the District and/or Contractors from initiating their own substance abuse policy governing other employees performing work on a project not otherwise covered under this Agreement. In the event there is no substance abuse policy in the applicable collective bargaining agreements, the policy adopted by the District and/or Contractor may apply. The District is not responsible for administering any substance abuse policy for non-District employees.

15. The Parties recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center"), the Center's Helmets to Hardhats program, and the Veteran's In Piping (V.I.P) program (this only pertains to the United Association PipeFitter's Local 597, Plumbers Local 130, and Sprinkler Fitter's Local 281), to serve as a resource for preliminary orientation, assessment of construction aptitude, and referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities, and other needs as identified by the Parties. The Contractors and Unions also agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on Covered Projects, including apprenticeship and employment opportunities on such projects. To the extent permitted by law, the Parties will give

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appropriate credit to such veterans for bona fide, provable past experience in the building and construction industry.

16. The Parties agree that Contractors working under the terms of this Agreement shall be required to utilize the maximum number of apprentices on Covered Projects as permitted under the applicable area-wide collective bargaining agreements contained in Appendix A, where feasible and practical.

17. Neither the District, the Contractors, nor the Unions shall discriminate against any employees of a protected class, including but not limited to on the basis of race, creed, color, national origin, age, or sex, in accordance with all applicable state and federal laws and regulations.

18. If any provision or other portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable in whole or in part, and such determination shall become final, it shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this Agreement enforceable. This Agreement, as amended, shall be enforced so as to give effect to the intention of the Parties insofar as possible.

19. Under this Agreement, any liability of the Partles shall be several and not joint. The District shall not be liable for any violations of this Agreement by any Contractor or Union, and any Contractor or Union shall not be liable for any violations of this Agreement by the District, any other Contractor, or any other Union. In the event any provision of this Agreement is determined to be invalid, Illegal, or unenforceable as specified in Paragraph 18, neither the District, nor any Contractor or Union, shall be liable for any action taken or not taken to comply with any court order.

20. The Parties are mutually committed to promoting a safe working environment for all personnel at the job site. It shall be the responsibility of each employer to which this Agreement applies to provide a work environment free of illegal drugs and any concealed weapons, to maintain safe working conditions for its employees, and to comply with all applicable federal, state, and local health and safety laws and regulations.

21. The use or furnishing of alcohol, weapons, or illegal drugs and the conduct of any other illegal activities at the job site is strictly prohibited. The Parties shall take every practical measure consistent with the terms of the applicable area-wide collective bargaining agreement to ensure that the job site is free of weapons, alcohol, and illegal drugs.

22. Each Union representing workers engaged in Construction Work on a Covered Project is bound to this Agreement with full authority to negotiate and sign this Agreement with the District.

23. All Parties represent that they have the full legal authority to enter into this Agreement.

24. This document, with the attached Appendices, constitutes the entire Agreement of the Parties and may not be modified or changed except by subsequent written agreement of the Parties.

25. Having been adopted by the Board of Commissioners on August 3, 2017, and ratified and effective as of the last date on the signature page, this agreement supersedes any other Multi-Project Labor Agreement previously entered into by the parties as of the date of ratification.

[Remainder of page intentionally left blank. Signature page follows.]

7

Dated this forth day of OCTOBER 2017 in Chicago, Cook County, Illinois.

On behalf of the Metropolitan Water Reclamation District of Greater Chicago

8

David St. Pierre Executive Director Management

Darlenc A. LoCascio Director of Procurement and Materials

Approved as to Form and Legality

Helen Shields-Wright Head Assistant Attorney

man h no

Susan T. Morakalis Acting General Counsel

Frank Avila Chairman of Finance

Approved

Mariyana T. Seyropoulos, President

TALL

Mariyana T. Spyropoulos Chairman, Committee on Labor and Industrial Relations

coueline Torres

Director of finance/Clerk

MWRD REA

September 6, 2017

Dated this the 13- day of Geptember, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: Teamsters Local Union No. 731 Labor Organization

APPROVED:

nu

Its Duly Authorized Officer Terrence J. Hancock, President

MINRO PA

September 6, 2017

Dated this the 13th day of September____, 2017 in Chicago, Cook County, Illinois.

On behalf of: <u>Sprinkler Fitters Union Local</u> 281, U.A. Labor Organization

APPROVED:

its Duly Authorized Officer

Dennis J. Fleming, Business Manager

MPLA-CC-12_	

9

MWRD PLA September 6, 2017

Dated this the 12 day of <u>Sept</u>, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: <u>SMART</u> Loca (#23) Labor Organization

APPROVED:

Roacs Territer

MURD PA September 6, 2017

Dated this the 12 day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of: <u>ROUFERS + Water Proofers</u> #11 Labor Organization

APPROVED:

Its Duly Authorized Officer

MURD PLA September 6, 2017

Dated this the <u>12</u> day of <u>Sept.</u>, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: <u>Plombers Local 130UA</u> Labor Organization

APPROVED:

James 7. Cayne Its Dyly Authorized Officer

MURD PLA.

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 12174 day of SEPTEMPER 2017 in Chicago, Cook County, Illinois.

On behalf of: / Labor Organization

APPROVED:

Its Duly Authorized Officer

MWRD PLA

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 214 day of Sectores 2017 in Chicago, Cook County, Illinois.

9

On behalf of: Painters/Glazters Labor Organization

APPROVED:

Its Duly Authorized Officer

MURD PLA September 6, 2017

Dated this the 2 day of SEPT 2017 in Chicago, Cook County, Illinois.

On behalf of: OPERPATING CHEMBER (SO Labor Organization

APPROVED:

0 Its Duly Authorized Officer

MWRD PLA

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 12 day of 52 pteulos, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: Much Mist Local 126 Labor Organization

APPROVED:

6 Mg

Its Duly Authorized Officer

MARD PLA

September 6, 2017

Dated this the 12 day of SEPTEMBER, 2017 in Chicago, Cook County, Illinois.

On behalf of: <u>LABORERS' DISTRICT COUNCIL</u> Labor Organization

APPROVED:

Is Duly Authorized Officer

MURS PLA

September 6, 2017

Dated this the 2014 thay of September 2017 in Chicago, Cook County, Illinois.

9

On behalf of: RIGGER LOCAL #36 Labor Organization

APPROVED:

Its Duly Authorized Officer

MURARA

September 6, 2017

Dated this the 12 day of _____ 2017 in Chicago, Cook County, Illinois.

On behalf of: Then Workers #63

APPROVED:

Its Duly Authorized Officer

MPLA-CC-22

9

MWRD PLA

September 6, 2017

Dated this the <u>(277</u> day of <u>September</u>, 2017 in Chicago, Cook County, Illinois. On behalf of: <u>FROW WORLERS</u> <u>H</u>| Labor Organization

APPROVED:

Its Duly Augurized Officer

MPLA-CC-23

9

MWOD PA

September 6, 2017

Dated this the 12th day of September 2017 in Chicago, Cook County, Illinois.

On behalf of: Heat + Front Insulators Local # 17 Labor Organization

APPROVED:

Wm. M_

MWRD PLA

September 6, 2017

Dated this the <u>12</u> day of <u>September</u>, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: DUEC LOCAL Z Labor Organization

APPROVED:

Its Duly Authorized Officer

MWRD PLA

September 6, 2017

Dated this the 12 day of Sept____, 2017 in Chicago, Cook County, Illinois.

On behalf of: Local 134 IBCW Labor Organization

APPROVED:

PA-

Its Duly Authorized Officer

MWPD PLA

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

y of STAT, 2017 in Chicago, Cook County, Illinois. MIUTI MISON PLASTRA'S Dated this the 12 day of _ On behalf of Labor Organization

APPROVED. 4

Its Duly Authorized Officer

MPLA-CC-27

9

MASP D PLA

September 6, 2017

Dated this the 12 day of SEDTEMPER 2017 in Chicago, Cook County, Illinois.

On behalf of ARPENTERS Labor Organization

APPROVED:

Its Duly Authorized Officer

Males PLA

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the <u>12</u> day of <u>SEPTERBER</u>, 2017 in Chicago, Cook County, Illinois.

9

On behalf of: BRICE 1AYERS AND ALLIED CRAFFS Labor Organization

APPROVED:

Its Duly Authorized Officer

MINRO PLA

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 12 day of September 2017 in Chicago, Cook County, Illinois.

On behalf of: <u>International Brotherhood of</u> Boiles makers Local 0070 Labor Organization

9

APPROVED:

-Its Duly Authorized Officer

APPENDIX A

For copies of Collective Bargaining Agreements, please go to the MWRD Website and click on:

Freedom of Information Act (FOIA)/Category of Records

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APPENDIX B

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JOINT CONFERENCE BOARD STANDARD AGREEMENT 6/1/15 – 5/31/20

Construction Employers' Association And Chicago & Cook County Building & Construction Trades Council

DocuSign Envelope ID: 5DD9C849-5998-4E39-8A30-1E642D256425

The Standard Agreement between The Construction Employers' Association and The Chicago & Cook County Building & Construction Trades Council Establishing The Joint Conference Board

DocuSign Envelope ID: 5DD9C849-6998-4E39-8A30-1E642D256425

CHRONOLOGY

ADOPTED NOVEMBER 18, 1926 AMENDED AND READOPTED JANUARY 11, 1929 AMENDED AND READOPTED JUNE 24, 1942 **READOPTED APRIL 28, 1947** AMENDED AND READOPTED MARCH 19, 1952 **READOPTED FEBRUARY 12, 1957** AMENDED AND READOPTED MAY 13, 1958 AMENDED AND READOPTED FEBRUARY 11, 1960 AMENDED AND READOPTED MAY 21, 1963 AMENDED NOVEMBER 16, 1965 AMENDED MARCH 14, 1967 AMENDED AND READOPTED MARCH 4, 1968 AMENDED AND READOPTED NOVEMBER 11, 1971 **READOPTED NOVEMBER 20, 1973 READOPTED DECEMBER 12, 1978 READOPTED APRIL 12, 1983** READOPTED MARCH 31, 1988 AMENDED AND READOPTED APRIL 25, 1989 REFORMATTED, AMENDED AND READOPTED JUNE 1, 1994 AMENDED AND READOPTED JUNE 1, 1999 AMENDED APRIL 1, 2003 AMENDED AND READOPTED JUNE 1, 2004 AMENDED AND READOPTED JUNE 1, 2005 . AMENDED AND READOPTED JUNE 25, 2008 AMENDED AND READOPTED FEBRUARY 15, 2010 AMENDED AND READOPTED MAY 28, 2015

Expiration Date: MAY 31, 2020

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PREAMBLE

This Agreement is entered into to prevent strikes and lockouts and to facilitate peaceful adjustment of jurisdictional disputes in the building and construction industry and to prevent waste and unnecessary avoidable delays and expense, and for the further purpose of at all times securing for the employer sufficient skilled workers and so far as possible to provide for labor continuous employment, such employment to be in accordance with the conditions and at the wages agreed upon, in the particular trade or craft, that stable conditions may prevail in the construction industry, that costs may be as low as possible consistent with fair wages and conditions and further to establish the necessary procedure by which these ends may be accomplished.

This Standard Agreement shall be considered and shall constitute a part of all agreements between Employers and Labor Unions, members of the Construction Employers' Association, herein call the Association, and the Chicago & Cook County Building & Construction Trades Council, herein called the Council, as containing within its terms the necessary protection of and assuring undisturbed conditions in the industry. In the event of any inconsistency between this Agreement and any collective bargaining agreement, the terms of this Agreement shall supersede and prevail except for all work performed under the NT Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors with the exception of the content and subject matter of Articles V, VI and VII of the AFL-CIO's Building & Construction Trades Department model Project Labor Agreement.

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DECLARATION OF PRINCIPLES

The Principles contained herein are fundamental, and no articles or section in this Agreement or in the collective bargaining agreement pertaining to a specific trade or craft shall be construed as being in conflict with these principles. In the event any conflict exists between this Agreement and any collective bargaining agreement subject to the Provisions of this Agreement and the dispute resolution provisions contained hereunder, and pertaining to a specific trade or craft concerning the resolution of jurisdictional disputes, the parties specifically agree that the terms of this Agreement are exclusive and supersede any other provisions or procedures relating to the settlement of jurisdictional disputes contained in such collective bargaining agreement.

- I. There shall be no limitation as to the amount of work a worker shall perform during the work day.
- II. There shall be no restriction on the use of machinery, tools or appliances.
- III. There shall be no restriction on the use of any raw or manufactured material, except prison made.
- IV. No person shall have the right to interfere with workers during working hours.
- V. The use of apprentices shall not be prohibited.
- VI. The foreman shall be the agent of the employer.
- VII. The worker is at liberty to work for whomever he or she sees fit but such worker shall demand and receive the wages agreed upon in the collective bargaining agreement covering the particular trade or craft under any circumstances.
- VIII. The employer is at liberty to employ and discharge for just cause whomsoever the employer sees fit.

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Exhibit **B**

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ARTICLES OF AGREEMENT

ARTICLE I

Therefore, with the Preamble and Declaration of Principles as part of and fundamental to this Agreement, the parties hereto hereby agree that there shall be no lockout by any employer, or strikes, stoppage, or the abandonment of work either individually or collectively, by concerted or separate action by any union without arbitration of any jurisdictional dispute as hereinafter provided.

ARTICLE II

The parties hereto hereby agree that in the manner herein set forth, they and the parties whom they represent will submit to arbitration all jurisdictional disputes that may arise between them and any misunderstanding as to the meaning or intent of all, or any part, of this Agreement, and they further agree that work will go on undisturbed during such arbitration, and that the decision of the arbitrator shall be final and binding on the parties hereto as provided in Article VI.

ARTICLE III

Paragraph 1. Should a Union affiliated with the Council abandon its work without first submitting any jurisdictional dispute to arbitration as provided herein, or should any employees whom it represents individually or collectively, or by separate or concerted action, leave the work, the employer shall have the right to fill the places of such workers with workers who will agree to work for the employer, and the Union shall not have the right to strike, or abandon the work, because of the employment of such workers.

Paragraph 2. The Union shall have the right to take the employees whom it represents from the work for the purpose of collecting wages and fringe benefits due, but such matter shall immediately be referred to arbitration. Should there be a dispute as to the amount due, the matter shall be first referred to arbitration as herein set forth.

Paragraph 3. The parties recognize the importance of having all work performed in a satisfactory manner by competent craftsmen. Because the unions affiliated with the Council have through apprenticeship and other training programs consistently striven to create an adequate supply of such skilled workers, and because it is desirable that the unions continue to do so, the Association, for itself and for each employer whom it represents agrees, to the extent permitted by law, that it will contract or subcontract any work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work, only with or to a contractor who is a party to a collective bargaining agreement with a union affiliated with the Council and, accordingly, is bound by all the terms and provisions of this Standard Agreement.

Exhibit B

Page 107 of 172

ARTICLE IV

The parties recognize the importance of having available and furnishing at all times during the life of this Agreement sufficient skilled workers, capable of performing the work of their trade, and to constantly endeavor to improve the ability of such workers and further to have in the making, through apprenticeship training, workers who can enter the trade properly equipped to perform the work, and to the extent possible, the parties agree to do everything within their power to cooperate in carrying out these purposes. Joint apprenticeship committees shall have the right to maintain schools for the training of apprentices registered under the terms of the particular collective bargaining agreement involved and such apprentices shall be considered skilled and qualified journeymen when adjudged competent by a committee composed of the members of the parties to the particular collective bargaining agreement involved. However, this article shall not be construed to disturb present systems wherein the labor organization which is a party to the particular collective bargaining agreement involved compels apprentices to attend trade school.

ARTICLE V

A Joint Conference Board is hereby created by agreement between the Association and the Council, which shall be binding upon the members and affiliates of each, and it is hereby agreed by the parties hereto, together with their members and affiliates, that they will recognize the authority of said Joint Conference Board and that its decisions shall be final and binding upon them as provided in Article VI. The administration of the Joint Conference Board shall be executed by the Secretary of the Board. All normal operating and all extraordinary expenses shall be borne equally.

ARTICLE VI

The Joint Conference Board shall be responsible for the administration of this Agreement. The primary concern of the Joint Conference Board shall be the adjustment of jurisdictional disputes by arbitrators selected by the Board. Decisions rendered by any arbitrator under this Agreement appointed by the Joint Conference Board relating to jurisdictional disputes shall be only for the specific job under consideration and shall become effective immediately and complied with by all parties. In rendering a decision, the Arbitrator shall determine:

- a) First whether a previous Agreement of Record or applicable agreement, including a disclaimer agreement, between the National or International Unions to the dispute governs.
- b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable Agreement of Record or agreement between the National or International Unions to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a

previous Decision of Record governing the case, the Arbitrator shall give equal weight to such Decision of Record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the Decision of Record and established trade practice in the industry rather than the prevailing practice in the locality.

- c) In order to determine the established trade practice in the industry and prevailing practice in the locality, the Arbitrator may rely on applicable agreements between the Local Unions involved in the dispute, prior decisions of the Joint Conference Board for specific jobs, decisions of the National Plan and the National Labor Relations Board or other jurisdictional dispute decisions, along with any other relevant evidence or testimony presented by those participating in the hearing.
- d) Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.

Agreements of Record are those agreements between National and International Unions that have been "attested" by the predecessor of the National Plan and approved by the AFL-CIO Building and Construction Trades Department and are contained in the Green Book. Such Agreements of Record are binding on employers stipulated to the Plan for the Settlement or Jurisdictional Disputes in the Construction Industry (the "National Plan"), the National Plan's predecessor joint boards or stipulated to the Joint Conference Board. Agreements of Record are applicable only to the crafts signatory to such agreements. Decisions of Record are decisions by the National Arbitration Panel or its predecessors and recognized under the provisions of the Constitution of the AFL-CIO Building and Construction Trades Department and the National Plan. Decisions of Record are applicable to all crafts.

The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute. Such decisions of the Arbitrator shall be final and binding subject only to an appeal, if such an appeal is available under conditions determined by the Building and Construction Trades Department of the American Federation of Labor and Congress of Industrial Organizations under the National Plan or any successor plan for the settlement of jurisdictional disputes.

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ARTICLE VII

This is an arbitration agreement and the intent of this agreement is that all unresolved jurisdictional disputes must be arbitrated under the authority of the Joint Conference Board and that the decisions, subject to the right of appeal provided in Article VI, shall be final and binding upon the parties hereto and upon their affiliates and the members of such affiliates, and that there shall be no abandonment of the work during such arbitration or in violation of the arbitration decision. The Joint Conference Board shall administer the neutral arbitration system of this agreement. Any party bound to this Agreement through a collective bargaining agreement with any Local Union affiliated with the Council shall be bound to this Agreement for all jurisdictional disputes that may arise between any Local Unions affiliated with the Council. Employers bound to this Agreement shall require that this Agreement be a part of all agreements with contractors or subcontractors covering work performed by any trade or craft affiliated with the Council. All parties to this Agreement release the Board from any liability arising from its action or inaction and covenant not to sue the Board. Any damages incurred by the Board for any breach of this covenant shall include, but are not limited to, the Board's costs, expenses and attorneys fees incurred as a result of said legal proceedings.

Paragraph 1 - The annual meeting of the Joint Conference Board shall be held in June, unless another date is agreed upon by the parties.

Paragraph 2 - The parties hereto shall designate an equal number of members who shall serve upon the Joint Conference Board. The members of the Board shall annually be certified by the Association and the Council in written communications addressed to the Board by the President and Secretary of the respective organizations. Each year the Joint Conference Board shall select a Chairman from among its members. The Joint Conference Board shall also select from among its members a Vice Chairman. The Board shall also select a Secretary. All members shall serve for one year or until their successors have been selected.

Paragraph 3 - At the annual meeting, the Association and Council shall each name at least five and up to ten impartial arbitrators.

Paragraph 4 - In the event the Chairman or Vice-Chairman is unable to serve by reason of resignation, death or otherwise, a successor may be selected for the remainder of the term by the party which made the original selection. Should a member of the Joint Conference Board be unable to serve, because of resignation, death or any other reason, the successor shall be selected by the Association or Council respectively in which such member holds membership.

Paragraph 5 - Should any member of the Board for any reason be unable to attend any meeting of the Board, the President of his respective organization shall be empowered to name a substitute for each absentee for that meeting.

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Paragraph 6 - Meetings of the Board may be called at any time by the Chairman, Secretary or three members of the Board. Seventy-two hours written notice of such meeting must be given to each member of the Board.

Paragraph 7 - Twelve members of the Board, six from each of the parties, present at the executive session, shall be a quorum for the transaction of business. The Chairman, or Vice-Chairman, when presiding, shall not be counted for the purpose of determining a quorum. Whenever the number of members present from each party at the executive session are unequal, he party with the fewer members present shall be entitled to cast a total number of votes equal to the number of the present members of the other party with the additional votes of said party being cast in accordance with the vote of the majority of its members who are present.

Paragraph 8 - If it is brought to the attention of the Chairman that any member (other than the Chairman) is not impartial with respect to a particular matter before the Board, the Chairman may excuse such member from the executive session if the Chairman concludes that such member has a conflict of interest with respect to such matter.

Paragraph 9 - Should a jurisdictional dispute arise between the parties hereto, among or between any members or affiliates of the parties hereto, or among or between any members or affiliates of the parties hereto and some other body of employers or employees, the disposition of such dispute shall be as follows:

- a) The crafts involved shall meet on the jobsite or a mutually agreed location to resolve the jurisdictional dispute.
- b) If the said dispute is not settled it shall be submitted immediately in writing to the Secretary of the Joint Conference Board. Unless agreed to in writing (correspondence, email, etc.) by the trades involved in the dispute, the trades and contractors shall make themselves available to meet within 72 hours at a neutral site with representatives of the Chicago & Cook County Building & Construction Trades Council and the Construction Employers' Association to resolve this jurisdictional issue.
- c) Failure to meet within seventy-two (72) hours of receiving written notice or email to the meetings contemplated in "a" or "b" above will automatically advance the case to the next level of adjudication.
- d) Should this jurisdictional issue be unresolved, the matter shall, within 72 hours not counting Saturday, Sunday and Holidays, hereafter, be referred to an Arbitrator for adjudication if requested in writing by any party. The Arbitrator shall hear the evidence and render a prompt decision within forty-eight (48 hours) of the conclusion of the hearing based on the criteria in Article VI. The arbitrator chosen shall be randomly selected based on availability from the list

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submitted in Article VII Paragraph 3. The decision of the Arbitrator shall be subject to appeal only under the terms of Article VI. The written decision shall be final and binding upon all parties to the dispute and may be a short form decision. The fees and costs of the arbitrator shall be divided evenly between the contesting parties except that any party wishing a full opinion and decision beyond the short form decision shall bear the reasonable fees and costs of such full opinion.

e) Should said dispute not be so referred by either or both of the parties, the Joint Conference Board may, upon its own initiative, or at the request of others interested, take up and decide such dispute, and its decision shall be final and binding upon the parties hereto and upon their members and affiliates as provided for in Article VI.

In either circumstance all of the parties are committed to a case until it is finalized, even if there is an appeal. However, in cases of jurisdictional or other disputes between a union and another union, which is a member of the same International Union, the matter in dispute shall be settled in the manner set forth by their International Constitution, but there shall be no abandonment of the work pending such settlement.

Paragraph 10 - All interested parties shall be entitled to make presentations to the Arbitrator. Any interested party present at the hearing, whether making a presentation or not, by such presence shall be deemed to accept the jurisdiction of the arbitrator and to agree to be bound by its decision and further agrees to be bound by the Standard Agreement, for that case only if not otherwise so bound.

Paragraph 11 - Upon approval of the Arbitrator other parties not directly involved in the dispute may be invited to be present during the presentation and discussion portions of an arbitration hearing. Attorneys shall not be permitted to attend or participate in any portion of a hearing.

Paragraph 12 – At no time shall any party to a pending dispute unilaterally or independently contact the Arbitrator assigned to hear the case. All inquiries must be submitted to the Secretary of the Joint Conference Board.

Paragraph 13 - The Joint Conference Board may also serve as a board of arbitration in other disputes, including wages, but only when requested to do so by all parties involved in the particular dispute or controversy. It is not the intention of this Agreement that the Joint Conference Board shall take part in such disputes except by mutual consent of all parties involved.

ARTICLE VIII

Paragraph 1 – The duly authorized representatives of members of affiliates of either party hereto, if having in their possession proper credentials, shall be permitted to visit jobs

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during working hours, to interview the contractor or the workers, but they shall in no way interfere with the progress of the work.

Paragraph 2 - The handling of tools, machinery and appliances necessary in the performance of the work covered by a particular collective bargaining agreement, shall be done by journeymen covered by such agreement and by helpers and apprentices in that trade, but similar tools, machinery and appliances used by other trades in the performance of their work shall be handled in accordance with the particular collective bargaining agreement of that trade.

Paragraph 3 - In the interest of the public economy and at the discretion of the employer or foreman, all small tasks covered by a particular collective bargaining agreement may be done by workers or laborers of other trades, if mechanics or laborers of this trade are not on the building or job, but same are not to be of longer duration than one-half hour in any one day. The Joint Conference Board may render a decision involving a composite crew.

Paragraph 4 - It is fundamental to the Standard Agreement that all members and affiliates of the parties to this Agreement be stipulated to the Standard Agreement and the Joint Conference Board. All current members of the Chicago and Cook County Building and Construction Trades Council, and their affiliates, by this Agreement are stipulated to the Standard Agreement and Joint Conference Board for the term of the current Standard Agreement. The area labor agreements of the members and affiliates of the parties setting forth language stipulating those parties to the Standard Agreement and Joint Conference Board shall be filed with the Secretary of the Joint Conference Board annually, at the time of the Joint Conference Board appointments. Current trade or craft agreements will prevail as interim agreements in the event labor negotiations are incomplete or in process at the time of the annual meeting.

Paragraph 5 - All members and affiliates of the parties with labor agreements containing language stipulating those parties to the Standard Agreement and Joint Conference Board shall remain stipulated for the term of the current Standard Agreement. Any members or affiliates of the parties who negotiate language stipulating the parties to the Standard Agreement and/or the Joint Conference Board in their area labor agreement shall remain stipulated for the term of the current Standard Agreement. Any Association that incorporates Standard Agreement and/or Joint Conference Board stipulation language into their collective bargaining agreement will automatically have representation on the Joint Conference Board.

Paragraph 6 - Only those crafts with stipulation language in their area labor agreements will be allowed to bring jurisdictional dispute cases to the Joint Conference Board. Those crafts without stipulation language in their area labor agreements will be allowed to participate if a jurisdictional dispute case is brought against their craft and will have the right to appeal any decision, if such an appeal is available, as provided in Article VI of this Agreement.

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Paragraph 7 - This agreement applies only to work performed within Cook County, Illinois.

Paragraph 8 - As herein before provided in Article VII, decisions or awards as to jurisdictional claims and decisions determining whether or not said decisions or awards have been violated rendered by the Joint Conference Board shall be final, binding and conclusive on all the parties hereto, on all of their members and affiliates, and on all employers subject only to the right of appeal herein provided for in Article VI.

Paragraph 9 - To further implement the decision of the Joint Conference Board, it is agreed that any party hereto, any of their members or affiliates, and any employer may at any time file a Verified Complaint in writing with the Joint Conference Board alleging a violation of a decision or award previously made. The Board shall thereupon set a hearing, to be held within three days of receipt of the Verified Complaint with respect to the alleged violation, and shall notify all interested parties of the time and place thereof. An Arbitrator selected pursuant to Article VII, Paragraph 9(c) shall conduct a hearing at the time and place specified in its notice. All parties shall be given an opportunity to testify and to present documentary evidence relating to the subject matter of the hearing within forty-eight (48) hours after the conclusion thereof, the Arbitrator shall render a written decision or award. Copies of the decision shall be served, by certified mail or by personal service, upon all parties hereto.

Paragraph 10 - Should the Arbitrator determine that there has been a violation of the Board's prior decision or award, the Arbitrator shall order immediate compliance by the offending party or parties. The Arbitrator may take one or more of the following courses of action in order to enforce compliance with the Board's decision:

a) The Arbitrator may assess liquidated damages not to exceed \$5,000 for each violation by individual members of, or employees represented by the parties hereto, and may assess liquidated damages not to exceed \$10,000 for each violation by either party hereto, or any of its officers or representatives. If a fine is rendered by the Arbitrator, it should be commensurate with the seriousness of the violation having a relationship to lost hours for the Unions and lost efficiency for the employer. Each of the parties hereto hereby agrees for itself, and its members, to pay to the other party within thirty days any sum, or sums, so assessed because of violations of a decision or award by itself, its officers, or representatives, or its member or members. Should either party to this agreement, or any of its members fail to pay the amount so assessed within thirty days of its assessment, the party or member so failing to pay shall be deprived of all the benefits of this agreement until such time as the matter is adjusted to the satisfaction of the Arbitrator.

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b) It may order cessation of all work by the employers and the employees on the job or project involved.

Paragraph 11 - All Notices under this Agreement shall be in writing and sent by the Administrator of the Joint Conference Board via facsimile or email. For all notifications to affiliates of the Chicago & Cook County Building and Construction Trades Council, the Administrator may rely up the facsimile numbers, addresses and email addresses in the current directory of the Council. For notifications to all contractors and subcontractors, the Administrator may rely on corporate information on the Illinois Secretary of State website or other appropriate databases. Original Notices of all Joint Conference Board decisions will be sent to each of the parties involved via certified mail. The notice provisions shall not include Saturday, Sunday or legal holidays.

Paragraph 12 - The following days shall be recognized as legal holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Paragraph 13 - The Board shall have no authority to undertake any action to enforce its decision after a hearing beyond informing the affected parties of its decision. Rather, it shall be the responsibility of the prevailing party to seek appropriate enforcement of a decision, including findings, orders or awards of the Board determining non-compliance with a prior award or decision. The prevailing party in any enforcement proceeding shall be entitled to recover its costs and attorneys fees from the non-prevailing party. In the event the Board is made a party to, or is otherwise required to participate in any such enforcement proceeding for whatever reason, the non-prevailing party shall bear all costs, attorneys fees, and any other expenses incurred by the Board in those proceedings.

Paragraph 14 - In establishing the jurisdiction of the Joint Conference Board over all parties to the dispute, the primary responsibility for the judicial determination of the arbitrability of a dispute and the jurisdiction of the Joint Conference Board shall be borne by the party requesting the Board to hear the underlying jurisdictional dispute. If all of the parties to the dispute do not attend the arbitration hearing or otherwise agree in writing that the parties are stipulated to the Joint Conference Board and Standard Agreement, the affected party or parties may proceed at the Joint Conference Board even in the absence of one or more parties to the dispute. In such instances, the issue of jurisdiction is an additional item that must be determined in the first instance by the Arbitrator who shall set forth basis of his determination in his decision. The Joint Conference Board may participate in any proceedings seeking a declaration or determination that the underlying dispute is subject to the jurisdiction and process of the Joint Conference Board. In any such proceedings, the non-prevailing party and/or the party challenging the jurisdiction of the Joint Conference Board shall bear all the costs, expenses and attorneys fees incurred by the Board in establishing its jurisdiction. The provision of Paragraph 13 regarding obtaining attorney fees shall apply.

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Paragraph 15 - It is agreed by the parties hereto that this agreement shall remain in full force and effect until June 1, 2020 unless otherwise amended by agreement of parties.

IN WITNESS WHEREOF, the parties have caused this document to be executed at Chicago, Illinois this 28th day of May, 2015.

CONSTRUCTION EMPLOYERS' ASSOCIATION

DocuSigned by: Charles Usher, Sr. APATTAAFACO84CD

BY Charles M. Usher

CHICAGO & COOK COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL

DocuSigned by: Jon Villanova

BY Thomas Villanova

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Exhibit B

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CERTIFICATE OF COMPLIANCE WITH MULTI-PROJECT LABOR AGREEMENT (MPLA)

I ________ (name of Company) hereby acknowledge that I have read the Metropolitan Water Reclamation District of Greater Chicago's 2017 Multi Project Labor Agreement (MPLA). I certify that my company and all subcontractors are in compliance with the MPLA in that my company and all subcontractors agree to be bound by and operate under a current collective bargaining agreement with a union or labor organization affiliate with the AFL-CIO Building Trades Department and the Chicago and Cook County Building and Construction Trades Council, or their affiliates which have jurisdiction over the work to be performed pursuant to this Contract, (hereinafter referred to as a "participating trade group") for all applicable work.

My company is currently a signatory with the following trade groups:

(e.g. Operating Engineers 150)

If bidder is not currently signatory with a participating union or labor organization, complete one of the following:

_____ The work to be performed by my company will occur at the company's facility and is exempt from the application of the MPLA. All other work for which the MPLA is applicable will be performed by signatories to the following participating trade groups: _____

(Identify all such participating unions or labor organizations. Attach a separate sheet if necessary).

_____ I commit to comply with the MPLA by entering into a collective bargaining agreement with the following participating trade group(s): ______

(Identify all such participating unions or labor organizations. Attach a separate sheet if necessary).

Name of Company

By:

Signature of Authorized Officer

Attest: _

Secretary

Dated: _____

Revised: October 2019

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EXHIBIT 4

AFFIRMATIVE ACTION ORDINANCE, REVISED APPENDIX D

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REVISED APPENDIX D

OF THE

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OF GREATER CHICAGO

Section 10. Certification Eligibility

Section 11, Appends

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December 31, 2022

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at trial demonstrated that past and current discriminatory practices continue to place MBE and

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AFFIRMATIVE ACTION ORDINANCE REVISED APPENDIX D

OF THE

METROPOLITAN WATER RECLAMATION DISTRICT

OF GREATER CHICAGO

Section 1. Declaration of Policy

It is the policy of the Metropolitan Water Reclamation District of Greater Chicago ("District") to ensure competitive business opportunities for minority and women-owned business enterprises in the award of and performance on District contracts; to prohibit discrimination on the basis of race, sex, color, disability, age, religion, national origin, sexual orientation, veteran status, or any other legally protected characteristic in the award of or participation on District contracts; and to abolish barriers to full participation on District contracts by all; and

The District, pursuant to its authority under 70 ILCS 2605/11.3, is committed to establishing procedures to implement this policy, as well as state and federal regulations, to assure the utilization of minority and women-owned business enterprises in a manner consistent with constitutional requirements; and

The District is committed to creating equal opportunities for minority and women-owned businesses to participate in the award and performance on District contracts.

Section 2. Findings

Whereas, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), enunciated certain standards that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements; and

Whereas, the District is committed to implementing its affirmative action program in conformance with the decision in *Croson* and its progeny; and

Whereas, in furtherance of this commitment, the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago ("Board of Commissioners") directed District employees and its outside consultant in 1989 to conduct an investigation into the scope of any discrimination in the award of and participation on District construction contracts, as well as in the construction industry in Metropolitan Chicago, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate on District contracts and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects; and

Whereas, on March 15, 1990, the District adopted its Revised Appendix D, Notice of Requirements for Affirmative Action Program to Ensure Minority, Small, and Women's Business Participation ("Appendix D"), which was later amended on June 21, 2001; and

Whereas, in 2003, the United States District Court in *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. III. 2003) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and

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WBE businesses at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBEs and WBEs; and

Whereas, a 2004 study of the Metropolitan Chicago Construction Industry by Timothy Bates, Professor at Wayne State University, concluded that the evidence that African American, Hispanic, and women-owned businesses have been, and continue to be disadvantaged in the construction industry is strong, has remained consistent, and that compelling evidence indicates that African American, Hispanic, and women-owned businesses face barriers in the Metropolitan Chicago construction industry greater than those faced by white males; and

Whereas, a 2005 study of the Metropolitan Chicago construction industry by David Blanchflower, Professor of Economics at Dartmouth College, determined that discrimination against Asian-owned businesses existed in the business community in areas of business financing and construction wages and that this, together with evidence of individual discrimination against Asian-owned construction companies, leads to the conclusion that discrimination against Asianowned businesses continues to exist in the Metropolitan Chicago construction industry; and

Whereas, in 2005, the United States District Court held in Northern Contracting, Inc. v. Illinois Department of Transportation, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005) that there is strong evidence of the effects of past and current discrimination against MBEs and WBEs in the construction industry in the Chicago area. The trial court's decision was affirmed in Northern Contracting, Inc. v. Illinois Department of Transportation, 473 F.3d 715 (7th Cir. 2007); and

Whereas, a 2006 Cook County, Illinois report entitled, "Review of Compelling Evidence of Discrimination Against Minority-and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois", concluded that there is extensive evidence of discrimination against MBEs and WBEs in the Chicago area construction marketplace, and the participation of MBEs and WBEs in the County's construction Prime Contracts and Subcontracts is below the availability of such businesses; and

Whereas, in 2006, the District commissioned a report on discrimination of and barriers to construction opportunities in the Chicago area market for minority and women-owned businesses and recommendations for District actions to reduce such issues, which found continuing disparities in the Chicago area construction market; and

Whereas, in 2010, Cook County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois", which found that MBEs and WBEs were not utilized in all industries in proportion to their availability; and

Whereas, in 2010, the United States Department of Justice produced a report to Congress, entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers to Minority- and Women-Owned Businesses," that updated the original basis for the United States Department of Transportation's DBE program and concluded that discriminatory barriers continue to impede the ability of MBEs and WBEs to compete with other businesses on a fair and equal footing in government contracting markets, including in the construction industry; and

Whereas, in 2012, the District commissioned a report on barriers to construction opportunities in the Chicago area market and recommendations for District efforts to reduce such barriers, which found continuing disparities in the Chicago area construction market; and

Whereas, in 2014, the District commissioned a Disparity Study, conducted by Colette Holt & Associates, on barriers to equal opportunities in the construction industry in the District's geographic and industry market areas and recommendations for District efforts to reduce such barriers, which found continuing disparities in the District's market area; and

Whereas, in 2015, the trial court in *Midwest Fence*, *Corp. v. U.S. Department of Transportation et al*, 2015 WL 139676 (N.D. Ill. March 24, 2015) held that discrimination continues to impede full and fair opportunities for disadvantaged business enterprises in the Illinois construction industry and this judgment was affirmed in 2016 by the Seventh Circuit Court of Appeals at 840 F.3d. 932; and

Whereas, in 2021, the District again commissioned a Disparity Study, conducted by Colette Holt & Associates, which likewise found that there continues to be barriers to equal opportunities for construction firms owned by minorities and women to compete for District contracts, both as Prime Contractors and Subcontractors; and

Whereas, based upon the 2021 Disparity Study, the District has determined that it has a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against minority and women-owned businesses in its market such that it will not function as a passive participant in the market failure of discrimination; and

Whereas, the Affirmative Action Program, adopted by the District on July 20, 1978 and amended from time to time, is hereby modified to further continue to ameliorate the effects of racial and gender discrimination in the marketplace; and

Whereas, the remedies adopted herein by the District will not overly burden non-MBE and non-WBE businesses in the award of District contracts; and

Whereas, the Board of Commissioners will periodically review minority and womenowned participation in contracts awarded by the District to ensure that the District continues to have a compelling interest in remedying discrimination and that the measures adopted herein remain narrowly tailored to accomplish that objective;

Now, therefore, the District's Board of Commissioners hereby adopts this Revised Appendix D:

Section 3. Purpose and Intent

The purpose and intent of this Affirmative Action Ordinance Revised Appendix D ("Revised Appendix D") is to mitigate the present effects of discrimination on the basis of race, ethnicity, or sex in opportunities to participate on the District's contracts as either a Prime Contractor or a Subcontractor and to achieve equitable utilization of minority and women-owned business enterprises on District contracts.

Section 4. Coverage

The following provisions, together with relevant forms, will apply and be appended to every Construction Contract awarded by the District where the total approved expenditure is in

excess of one hundred thousand dollars (\$100,000.00), except contracts approved by the Board of Commissioners pursuant to Sections 11.4 and 11.5 of the District's Purchasing Act (70 ILCS 2605).

Section 5. Definitions

The meaning of these terms in this Revised Appendix D are as follows:

(a) "Administrator" means the District's Affirmative Action Program Administrator.

(b) "Affiliate" of an individual or entity means an individual or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the individual or entity. In determining affiliation, the District will consider all appropriate factors, including common ownership, common management, and contractual relationships.

(c) "Annual Aspirational Goals" means the targeted levels established by the District for the annual aggregate participation of MBEs and WBEs on District Construction Contracts.

(d) "Bidder" means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, a limited liability company, or any other entity which has submitted a bid on a District contract.

(e) "Books and Records" include, but are not limited to, payroll records, bank statements, bank reconciliations, accounts payable documents, account receivable documents, ledgers, all financial software, and all employer business tax returns.

(f) "Calendar Days" in computing any period of time described herein, the day from which the period begins to run will not be counted (*e.g.*, if a notice is issued on a Monday, the countdown of days starts on Tuesday). When the last day of the period is a Saturday or Sunday, the period does not extend to the next day. Only in instances where District offices are closed in observance of a federal holiday, will the period extend to the next day.

(g) "Construction Contract" means any District contract, agreement, or amendment thereto, providing for a total expenditure in excess of one hundred thousand dollars (\$100,000.00) for the construction, demolition, replacement, major repair or renovation, and maintenance of real property and improvement thereon or sludge hauling, and any other construction related contract which the District deems appropriate to be subject to this Revised Appendix D.

(h) "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by performing, managing, and supervising the work involved, or fulfilling responsibilities.

(i) "Contract Goals" means the numerical percentage goals for MBE or WBE participation to be applied to an eligible District Construction Contract subject to this Revised Appendix D for the participation of MBEs and WBEs based upon the scope of work of the contract, the availability of MBEs and WBEs to meet the goals, and the District's progress towards meeting its annual MBE and WBE goals.

(j) "Dealer" means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

To be a dealer, the business must engage in, as its principal business, and under its own name, the purchase and sale of the products in question. A business that operates as a dealer in bulk items such as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers do not meet the definition of dealers.

(k) "Director" means the District's Director of Procurement and Materials Management, formerly known as the Purchasing Agent.

(1) "Economically Disadvantaged" means an individual with a Personal Net Worth of less than \$2,000,000.00, indexed annually for the Chicago Metro Area Consumer Price Index, published by the United States Department of Labor, Bureau of Labor Standards, beginning January 2008.

(m) "Executive Director" means the chief administrative officer of the District, formerly known as the General Superintendent.

(n) "Expertise" means demonstrated knowledge, skills, or ability to perform in the field of endeavor in which certification is sought by the business as defined by normal industry practices, including licensure, where required.

(o) "Good Faith Efforts" means honest, fair, and commercially reasonable actions undertaken by a Prime Contractor to meet the MBE or WBE Contract Goal, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Goals.

(p) "Hearing Officer" is an attorney licensed to practice in the State of Illinois and appointed by the Board of Commissioners to conduct hearings regarding a Prime Contractor's or Subcontractor's compliance or non-compliance with this Revised Appendix D.

(q) "Joint Venture" means an association of two or more individuals, or any combination of types of business enterprises and individuals numbering two or more, proposing to function as a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill, and knowledge, and in which the certified business is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners, their relationship, and detailing their respective responsibilities on the contract.

(r) "Job Order Contract" or "JOC" means a business, fixed price, indefinite quantity contract designed to complete a large number of construction projects quickly.

(s) "Local Business" means a business located within the District's geographic market area as established by the 2021 Disparity Study, namely the counties of Cook, DuPage, Kane, Lake, McHenry, or Will, in the State of Illinois.

(t) "Manufacturer" means a business that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Bidder. Brokers and packagers do not meet the definition of Manufacturer.

(u) "Minority-owned Business Enterprise" or "MBE" means a local small business entity, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture, or any other business or professional entity, which is at least fifty-one (51) percent owned by one or more Socially and Economically Disadvantaged individuals who are members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one (51) percent of the stock of which is owned by one or more members of one or more management, policies, major decisions, and daily business operations are controlled by one or more Minority Individuals.

(v) "Minority Individual" means a natural person who is a citizen of the United States or lawful permanent resident of the United States and one of the following:

(i) African American – An individual having origins in any of the Black racial groups of Africa and is regarded as such by the African American community of which the individual claims to be a part.

(ii) Hispanic American – An individual having origins from Mexico, Puerto Rico, Cuba, and South or Central America and is regarded as such by the Hispanic community of which the individual claims to be a part, regardless of race.

(iii) Asian American – An individual having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the individual claims to be a part.

(iv) Native American – An individual having origins in any of the original peoples of North America and who is recognized through tribal certification as a Native American by either a tribe or a tribal organization recognized by the government of the United States of America.

(v) Individual members of other groups whose participation is required under state or federal regulations or by court order.

(vi) Individual members of other groups found by the District to be Socially Disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the District's marketplace or to do business with the District.

(w) "Personal Net Worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's Personal Net Worth does not include the individual's ownership interest in a business entity seeking to do business with the District or other certified MBE or WBE, provided that the other business is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse or recognized civil partner, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other

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retirement savings or investment programs, less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(x) "Prime Contractor" means a contractor that is awarded a District contract and is responsible for the completion of the entire District contract, including purchasing all materials, hiring and paying Subcontractors, and coordinating all the work.

(y) "Program" means the program provisions established by this Revised Appendix D.

(z) "Small Business Enterprise" means a small business as defined by the United States Small Business Administration (SBA), pursuant to the business size standard found in 13 CFR Part 121, that is relevant to the scope of work the business seeks to perform on District contracts. A business is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the business' previous five (5) fiscal years, exceed the size standards of 13 CFR Part 121.

(aa) "Socially Disadvantaged" means a Minority Individual or woman who has been subjected to racial, ethnic, or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social Disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

(bb) "Subcontractor" means a party that enters into a subcontract agreement with a District Prime Contractor to perform work or provide materials on a District project.

(cc) "Tier" refers to the relationship of a Subcontractor to the Prime Contractor. A Subcontractor having a contract with the Prime Contractor, including a material supplier to the Prime Contractor, is considered a "first-tier Subcontractor," while a Subcontractor's Subcontractor is a "second-tier Subcontractor", and so forth. The Subcontractor is subject to the same duties, obligations, and sanctions as the Prime Contractor under this Revised Appendix D.

(dd) "Utilization Plan" means the plan, in the form specified by the District, which must be submitted by a Bidder listing the MBEs and WBEs that the Bidder intends to use in the performance of a contract, the scope of work, and the dollar values or the percentages of the work to be performed.

(ee) "Vendor List" means the District's list of businesses that are certified as minorityowned or women-owned by the City of Chicago, the County of Cook, the State of Illinois, the Women's Business Development Center, or the Chicago Minority Business Development Council, or as a Disadvantaged Business Enterprise by the Illinois Unified Certification Program, or as a Small Disadvantaged Business by the United States Small Business Administration.

(ff) "Women-owned Business Enterprise" or "WBE" means a local small business entity which is at least fifty-one (51) percent owned by one or more Socially and Economically Disadvantaged individuals who are women, or in the case of a publicly held corporation, fifty-one (51) percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

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Determination of whether a business is at least fifty-one (51) percent owned by a woman or women will be made without regard to community property laws.

Section 6. Non-Discrimination and Affirmative Action Clause

As a prerequisite to selection, a Prime Contractor must agree in its bid proposal for a Construction Contract subject to this Revised Appendix D to the following commitments:

(a) It will not discriminate on the basis of race, sex, color, disability, age, religion, national origin, sexual orientation, veteran status, or any other legally protected characteristic in the bid solicitation for or purchase of goods in the performance of its contract.

(b) It will actively solicit bids for the purchase or subcontracting of goods or services from qualified MBEs and WBEs.

(c) It will undertake Good Faith Efforts in accordance with the criteria established in this Revised Appendix D to ensure that qualified MBEs and WBEs are utilized in the performance of the Construction Contract and share in the total dollar value of the contract in accordance with each of the applicable Contract Goals established by the District for the participation of qualified MBEs and WBEs.

(d) It will require its Subcontractors at all Tiers to make similar Good Faith Efforts to utilize qualified MBEs and WBEs.

(e) It will maintain records and furnish to the District all requisite information and reports for monitoring of compliance with this Revised Appendix D.

(f) It will designate an individual to act as an affirmative action coordinator on its behalf to facilitate the review of all concerns related to the participation of MBEs and WBEs.

Section 7. Race and Gender-Neutral Measures to Ensure Equal Opportunities for All Prime Contractors and Subcontractors

The District will develop and utilize measures to encourage and facilitate the participation of all businesses engaged in District construction contracting activities. These measures will include but are not limited to:

(a) Unbundling by dividing large dollar value contracts into smaller dollar value contracts to facilitate the participation of MBEs and WBEs as Prime Contractors.

(b) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested Prime Contractors and Subcontractors.

(c) Providing timely information on contracting procedures, bid preparation, and specific contracting opportunities, including through an electronic system and social media.

(d) Assisting MBEs and WBEs with training seminars on the technical aspects of preparing a bid for a District contract or otherwise participating on District Contracts.

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(e) Assisting businesses in overcoming barriers such as difficulty in obtaining financing and support for business development such as accounting, bid estimation, safety requirements, and quality control.

(f) Prohibiting Prime Contractors from denying a subcontract to a MBE or WBE solely on the basis of that businesses inability to obtain the required performance bond.

(g) Limiting the amount of insurance coverage required by a Prime Contractor for a subcontract to only that which is required for the portion of work to be performed by the Subcontractor.

(h) Holding pre-bid conferences to explain the contract and to encourage Bidders to contact all available businesses about opportunities to perform as Subcontractors. The pre-bid conferences will be a mandatory requirement on all District contracts where this Revised Appendix D is applicable.

(i) Adopting prompt payment procedures, including but not limited to, requiring that Prime Contractors promptly pay Subcontractors in compliance with Section 9 of the Local Government Prompt Payment Act, 50 ILCS 505/9, and investigating complaints or charges of excessive delay in payments.

(j) Reviewing retainage, bonding, and insurance requirements to eliminate unnecessary barriers to contracting with the District.

(k) Collecting information from Prime Contractors on District Construction Contracts which detail the bids received from all Subcontractors and the expenditures to Subcontractors on District Construction Contracts.

(l) Developing a separate SBE program that is race and gender neutral which designates specific small dollar value contracts for bid only by certified SBE businesses.

(m) Maintaining information on all businesses bidding on District contracts as both Prime Contractors and Subcontractors.

(n) At the discretion of the Board of Commissioners, awarding a representative sample of District contracts without Contract Goals to determine MBE and WBE utilization in the absence of Contract Goals.

(o) Referring complaints of discrimination against MBEs and WBEs to the appropriate authority for investigation and resolution.

Section 8. Support and Outreach

To provide optimal support to MBEs and WBEs desiring to participate on District contracts, the Administrator will facilitate support and outreach, which may be in-person and/or virtual as conditions permit, and may include the following:

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(a) Meeting with business organizations to engage in discussions regarding difficulties experienced by their members on District contracts and effective steps to minimize those difficulties.

(b) Meeting with assist agencies and member businesses interested in working on District contracts to discuss upcoming opportunities.

(c) Meeting with new vendors to provide information regarding completion of the District's vendor application and bid documents.

(d) Meeting with Prime Contractors to collect feedback regarding their experiences under this Revised Appendix D.

(e) Participation in mandatory pre-bid conferences, as applicable.

(f) Hosting various seminars and support endeavors as the Administrator deems necessary for MBEs and WBEs to provide information on topics of interest, including financing, bonding, insurance, certification, bid estimation, safety requirements, and quality control.

BE and WBE participation on the contract

Section 9. District Roles and Responsibilities

The District is responsible for promoting, supporting, and assisting in creating awareness of the Program such that it aides the Administrator in the implementation of the Annual Aspirational Goals, Contract Goals, and objectives of the Program. To reduce barriers to MBEs and WBEs participation on District contracts, all departments requesting bids, proposals, or any other solicitation governed by this Revised Appendix D will:

(a) Provide notification of anticipated solicitations including the following information: the scope of work, experience required, insurance requirements, budget, schedule, bid specifications, and any other relevant information no later than fourteen (14) calendar days prior to the procurement announcement.

(b) Evaluate anticipated solicitations to unbundle items or services to permit offers on quantities or scope of work less than the total requirement or the performance of discreet portions of the project, where feasible.

(c) At least fourteen (14) calendar days before a solicitation will be advertised, forward a copy of the advertisement to the Administrator to ensure appropriate Program language has been included.

(d) Ensure that all applicable provisions of the Program are included in bid specifications/proposals and contracts.

(e) Monitor contracts to ensure compliance with the Program and provide notification to the Administrator in instances where problems with compliance arise.

(f) Assist in the compilation of contract data for MBE and WBE availability and utilization.

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(g) Provide the Administrator with a copy of, or independent electronic access to, the necessary information for each contract including, but not limited to, the contract value, pre-bid/pre-proposal sign in sheets, the bid or proposal results, any contract modifications, and an executed copy of the agreement.

(h) Notify the Administrator no later than ten (10) calendar days prior to any key postaward contract meetings or issues that could affect the Prime Contractor's ability to achieve the MBE or WBE commitment, such as contract kickoff meetings, monthly meetings, or meetings to address contract performance issues affecting MBE and WBE commitments.

(i) Require that each Prime Contractor submit to the Administrator, as part of its pay request process, the required Program information in the format required to ensure an accurate accounting of MBE and WBE participation.

(j) Support the Administrator by ensuring that Prime Contractors provide all necessary documents and information to close out the contract that provides a final accounting for MBE and WBE participation on the contract.

(k) Advertise contract opportunities via the District's website, and other avenues in consultation with the Administrator, where appropriate, to maximize MBE and WBE participation.

(1) Develop and advertise forecasts of upcoming procurement opportunities, including on an annual basis.

Section 10. Certification Eligibility

(a) The District is a self-certifying agency. In addition to issuing certifications, the District will accept certifications from the City of Chicago, Cook County, and other governmental agencies approved by the Administrator, issued within the last two (2) years of submittal. The District will verify a business' certification to ensure that the business meets the requirements of this Revised Appendix D. Any business that has been previously certified by the City of Chicago, Cook County, or another Administrator approved governmental agency shall be able to participate in an abbreviated verification process. Details regarding the abbreviated process will be maintained on the District's website.

(b) The verification permitted in Subsection (a) may take place in advance of the bid process or during the bid process. The District will maintain an online list of verified businesses.

(c) Only businesses that meet the criteria for certification as a MBE or WBE may be eligible for credit towards meeting Contract Goals. The business applying for District certification has the burden of production and persuasion by a preponderance of the evidence at all stages of the certification process.

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(d) Only a business owned by a Socially and Economically Disadvantaged individual is eligible to participate in the Program.

(i) The business' ownership by a Socially and Economically Disadvantaged individual must be real, substantial, and continuing, going beyond *pro forma* ownership of the business as reflected in ownership documents. The owner must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.

(ii) The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the business' operations, indispensable to the business' potential success, specific to the type of work the business performs, and documented in the business' records. The individual whose Expertise is relied upon must have a commensurate financial investment in the business.

(e) Only a business that is managed and controlled by a Socially and Economically Disadvantaged individual may be certified as a MBE or WBE.

(i) A business must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner. There can be no restrictions through corporate charter provisions, by-laws, contracts, or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner, without the cooperation or vote of any non-Socially and Economically Disadvantaged individual, from making any business decision, including making obligations or dispersing of funds.

(ii) The Socially and Economically Disadvantaged owner must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long term decisions on management, policy, operations, and work.

> (iii) The Socially and Economically Disadvantaged owner may delegate various areas of the management or daily operations of the business to individuals who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner must retain the power to hire and fire any such individual. The Socially and Economically Disadvantaged owner must exercise control over the business' operations, work, management, and policy.

(iv) The Socially and Economically Disadvantaged owner must have an overall understanding of managerial and technical competence, experience, and Expertise, directly related to the business' operations and work. The Socially and Economically Disadvantaged owner must have the ability to intelligently and critically evaluate information presented by other participants in the business'

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activities and to make independent decisions concerning the business' daily operations, work, management, and policymaking.

(v) If federal, state, or local laws, regulations, statutes, or District ordinance, or other legal regulations require the owner to have a particular license or other credential to own or control the business, then the Socially and Economically Disadvantaged owner must possess the required license or credential. If federal, state, or local laws, regulations, statutes, or District ordinance, or other legal regulations does not require that the Socially and Economically Disadvantaged owner possess the license or credential, and the Socially and Economically Disadvantaged owner lacks such license or credential, this information will be a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner actually controls the business.

(vi) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the business or prevents them from devoting sufficient time and attention to the affairs of the business, including the management and control of the business' day-to-day operations.

(f) Only an independent business may be certified as a MBE or WBE. An independent business is one whose viability does not depend on its relationship with another business. Recognition of an applicant as a separate entity for tax or corporate purposes is not sufficient to demonstrate that a business is independent. In determining whether an applicant is an independent business, the Administrator will:

(i) Evaluate relationships with non-certified businesses in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(ii) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner of the applicant for MBE or WBE certification and non-certified businesses or individuals thereby associated compromise the applicant's independence.

(iii) Examine the applicant's relationships with non-certified businesses to determine whether a pattern of exclusive or primary dealings with non-certified businesses compromises the applicant's independence.

(iv) Consider the consistency of relationships between the applicant and non-certified businesses with normal industry practice.

(g) All documentation submitted by an applicant will remain in the custody of the District pursuant to Local Records Act, 50 ILCS 205, whether or not the certification is approved.

(h) If it is determined by the Administrator that an applicant knowingly, willingly, and intentionally submitted false or misleading information during the verification process, the applicant will be referred to the appropriate law enforcement agency for investigation and prosecution, where applicable.

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(i) An applicant will be certified only for the specific types of work in which the Socially and Economically Disadvantaged owner for the MBEs and/or WBEs has the ability and Expertise to manage and control the business' operations and work.

(j) An applicant will be certified only in the specific category for which they are applying. A business that is both a MBE and WBE will not automatically be certified as both if the application is submitted only in regards to one category.

(k) The District will certify the eligibility of Joint Ventures involving MBEs and WBEs and non-certified businesses for credit towards a Contract Goal.

(1) A business found to be ineligible may not apply for certification for two (2) years after the effective date of the final decision.

(m) The certification status of all MBEs and WBEs will be reviewed every two (2) years by the Administrator. Failure of a business to seek recertification by filing the necessary documentation with the Administrator as required will result in decertification.

(n) It is the responsibility of the certified business to notify the Administrator of any change in its circumstances affecting its continued eligibility, including change in ownership and licenses held by the business. Failure to do so will result in the business' decertification.

(o) The Administrator will decertify a business that does not continuously meet the eligibility criteria.

(p) Decertification by another agency will create a *prima facie* case for decertification by the District. The challenged business will have the burden of proving by a preponderance of the evidence that its District certification should be maintained.

Section 11. Appeals

A business that has been denied certification or recertification, or that has been decertified by the Administrator may protest the denial or decertification by filing a written appeal with the Executive Director. The appeal must meet the following criteria:

(a) **Timeliness of appeals**. The appeal must be received by the Executive Director within ten (10) calendar days of the date of the letter denying certification, recertification, or decertifying. The appeal must be received no later than 4:30 p.m. central time zone on the tenth (10) calendar day. Any appeal received after this time will not be considered timely and will be automatically denied.

(b) **Form of appeals**. Appeals may be a type-written hardcopy document delivered to the District or may be attached to electronic mail sent directly to the Executive Director no later than 4:30 p.m. If the appeal is a hard-copy document, it must be addressed to the Executive Director and delivered to 100 E. Erie no later than 4:30 p.m.

(c) **Content of appeals**. The appeal must clearly articulate the basis on which it is being made and consist only of a letter clearly explaining why the business believes that the

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Administrator's decision should not be upheld. No new documents may be submitted for the Executive Director's consideration. Only documents already in the possession of the Administrator will be considered in the appeal to the Executive Director.

(d) **Decision on appeals**. The Executive Director will carefully review all documents including the written request for appeal and will render a decision within thirty (30) calendar days of receipt of a timely appeal. The Executive Director's decision will be the final decision on the matter and is not subject to appeal or review.

(e) **Denial of appeals**. A business found to be ineligible for certification may not reapply for certification for two (2) years after the date of the final decision issued by the Executive Director.

Section 12. Schedule of Goals for Minority and Women-Owned Business Enterprise Utilization

In fulfillment of this policy to provide MBEs and WBEs full and equitable opportunities to participate on District contracts as both Prime Contractors and Subcontractors, the District will establish Annual Aspirational Goals for MBE and WBE participation, based on the availability of MBEs and WBEs in the District's geographic and procurement market area as established by the 2021 Disparity Study.

Section 13. Contract Goals

(a) The Administrator, based upon the information provided by the User Department, will establish Contract Goals for Construction Contracts based upon the availability of at least three (3) MBEs and three (3) WBEs registered on the District's Vendor List to perform the anticipated scope of work on the entire contract and the District's utilization of MBEs and WBEs to date.

(b) Where a substantial portion of the total Construction Contract cost is for the purchase of equipment, the Administrator may designate goals for only that portion of the contract relating to construction work and related supplies or modify the limitations on the credit for MBE and WBE suppliers.

(c) The Contract Goals will be designated in the contract documents.

(d) All contracts on which goals are placed will have goals that are narrowly tailored to the type of work being performed under the contract.

Section 14. Counting MBE and WBE Participation Towards Contract Goals

(a) A Bidder may achieve the Contract Goals by its status as a MBE or WBE, by entering into a Joint Venture with one or more MBEs and WBEs, by first-tier subcontracting a portion of the contract to one or more MBEs and WBEs, by direct purchase of materials or services from one or more MBEs and WBEs, or by any combination of the above.

(b) If a business is certified as both a MBE and a WBE, the Bidder may count the business' participation either toward the achievement of its MBE or WBE Contract Goal, but not

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both. Participation by a business certified as both an MBE and a WBE cannot be split between the MBE and the WBE Contract Goal.

(c) When a MBE or WBE participates on a contract, the District will count only the value of the work actually performed by the MBE or WBE towards the Contract Goal.

(d) A Prime Contractor may count the entire amount of that portion of a contract that is performed by MBEs or WBEs own forces, including the cost of supplies and materials obtained and installed by the MBE or WBE for the work on the contract, and supplies purchased or equipment leased by the MBE or WBE used to directly perform the work on the contract, except supplies and equipment the MBE or WBE purchases or leases from the Prime Contractor or the Prime Contractor's Affiliate.

(e) Where a Bidder or first-tier Subcontractor engages in a Joint Venture to meet the Contract Goal, the Administrator will review the profits and losses, initial capital investment, actual participation of the Joint Venture in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the Joint Venture, which must be fully disclosed and documented in the Utilization Plan in the same manner as for other types of participation, to determine the degree of MBE or WBE participation that will be credited towards the Contract Goal. The Joint Venture's Utilization Plan must evidence how it will meet the Contract Goal or document the Bidder's Good Faith Efforts to do so. The Administrator has the authority to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to assess compliance with this Revised Appendix D. The MBE or WBE Joint Venture partner must have a history of proven Expertise in performance of a specific area of work and will not be approved for performing only general management of the Joint Venture. The specific work activities for which the MBE or WBE Joint Venture partner will be responsible and the assigned individuals must be clearly designated in the Joint Venture agreement. The Joint Venture must submit to the Administrator quarterly work plans, including scheduling dates of the tasks. The Administrator must approve the quarterly plans for the MBE or WBE Joint Venture partner's participation to be credited towards the Contract Goals.

(f) Only the participation of MBEs or WBEs that will perform as first-tier Subcontractors will be counted towards meeting the Contract Goals.

(g) Only expenditures to a MBE or WBE that is performing a Commercially Useful Function will be counted towards the Contract Goals.

(i) A business is considered to perform a Commercially Useful Function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing; managing, and supervising the work involved. The business must pay all costs associated with personnel, materials, and equipment. The business must be formally and directly responsible for the employment, supervision and payment of its workforce, must own and /or lease equipment, and must be responsible for negotiating price, determining quality and quantity and paying for and ordering materials used. The business cannot share employees with the Prime Contractor or its Affiliates. No payments for use of equipment or materials by the business can be made through deductions by the

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Prime Contractor. No family members who own related businesses are allowed to lease, loan, or provide equipment, employees, or materials to the business.

(ii) A business does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed to obtain the appearance of MBE or WBE participation. The Prime Contractor is responsible for ensuring that the business is performing a Commercially Useful Function.

(iii) The District will evaluate the amount of work subcontracted, industry practices, and whether the amount the MBE or WBE is to be paid under the contract is commensurate with the work it is actually performing, along with other relevant factors.

(iv) If a business subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a business is presumed not to be performing a Commercially Useful Function, the business may present evidence to the Administrator to rebut this presumption. If no rebuttal is presented, then the presumption will stand.

(h) Credit towards the Contract Goals will be allowed only for those direct services performed or materials supplied by MBEs or WBEs or first-tier Subcontractor MBEs or WBEs. No less than eighty-five (85) percent of their work must be performed with their own forces, through the use of its own management and supervision, employees, and equipment. If industry standards and practices differ, the business must furnish supporting documentation to rebut this presumption to the Administrator.

(i) Prime Contractors are prohibited from allocating MBE and WBE Subcontract work to items identified in a contract as allowances, contingencies, and unit price. Allocation by a Prime Contractor to these categories under the scope of work of a contract will result in the rejection of the Utilization Plan by the Administrator.

(j) Purchase of materials and supplies must be pre-approved if their purchase is related to Contract Goal attainment. The Bidder may count payments to MBE or WBE regular dealers or Manufacturers for Contract Goal attainment for no more than fifty (50) percent of each MBE or WBE goal, unless otherwise approved by the Administrator. If the Bidder exceeds the supplier exception amount allowable as stated in the bid documents, the bid will be viewed as non-responsive.

(k) If a business ceases to be certified during its performance on a contract, the dollar value of work performed under the contract with that particular business after it has ceased to be certified will not be counted.

(I) In determining achievement of Contract Goals, the participation of a MBE or WBE will not be counted until that amount, including retention, has been paid to the MBE or WBE.

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Section 15. Utilization Plan Submission

(a) Compliance documents must be submitted as detailed in the bid solicitation. Failure to do so will render the bid non-responsive. The Administrator will review compliance documents for each bid submission to determine whether it meets the requirements herein.

(b) A Bidder must either meet the Contract Goals or establish its Good Faith Efforts to do so as described in this Revised Appendix D and the bid solicitation.

(c) Each Bidder must submit with its bid a completed and signed Utilization Plan that lists for each Subcontractor and supplier proposed to be used to perform the scope of work on the contract: the name; address; telephone number; electronic mail address; six-digit North American Industry Classification System code; a description of the work with contract item number; the dollar amount to be allocated to the business; the contact person of the business; and any other information required in the solicitation documents. Each Bidder's Utilization Plan must commit to MBE or WBE participation equal to or greater than each of the Contract Goals set forth in the bid solicitation, unless the Bidder requests a partial or total waiver of the requirement that it file a Utilization Plan or achieve a particular goal by submitting with the bid a signed Waiver Request in the form specified in the bid solicitation.

(d) Each Bidder must submit with its bid a signed MBE/WBE Subcontractor's Letter of Intent for each business proposed to meet the Contract Goals in the form specified in the bid solicitation, with a copy of each MBE or WBE current Letter of Certification from a state or local government or agency, or documentation demonstrating that the business is a MBE or WBE within the meaning of this Revised Appendix D. In the event of a conflict between the amounts stated on the Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent, the terms stated on the Utilization Plan will control. An original or scanned copy of the MBE/WBE Subcontractor's Letter of Intent will be acceptable.

(e) Where a Bidder has failed to meet the Contract Goals, it must file a Waiver Request documenting its Good Faith Efforts to meet the Contract Goals as provided in the format described in the bid solicitation. Following submittal of a Waiver Request, the Administrator will require the Prime Contractor to file a Contractor Information Form and provide additional documentation of its Good Faith Efforts in attempting to fulfill such goals.

(i) Good Faith Efforts will include, but are not limited to:

(1) Attending the mandatory pre-bid conference conducted by the District to acquaint Prime Contractors with MBEs and WBEs available to provide relevant goods and services and to inform MBEs and WBEs of subcontracting opportunities on a contract.

(2) Reviewing the Vendor List of available MBEs and WBEs maintained by the District, as well as other state and local governments and agencies, prior to the bid opening to identify qualified MBEs and WBEs for solicitation for bids.

(3) Soliciting, not less than fifteen (15) calendar days before the bid opening date, through reasonable and available means (e.g., written notices,

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advertisements on social media) MBEs and WBEs that can provide services in the anticipated scopes of subcontracting on the contract.

(4) Providing MBEs and WBEs with convenient and timely opportunities to review and obtain relevant plans, specifications, or terms and conditions of the contract to enable such MBEs and WBEs to prepare an informed response to a Prime Contractor solicitation and following up initial solicitations to answer questions and encourage MBEs and WBEs to submit bids.

(5) Negotiating in good faith with interested MBEs and WBEs that have submitted bids and thoroughly investigated their capabilities. Evidence of such negotiations includes: the names, electronic mail addresses, and telephone numbers of MBEs and WBEs with whom the Bidder negotiated; a description of the information provided to MBEs and WBEs regarding the work selected for subcontracting; and explanations as to why agreements could not be reached with MBEs and/or WBEs to perform the work. The Bidder may not reject MBEs and WBEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself a sufficient reason for a Bidder's failure to meet the Contract Goals, as long as such costs are reasonable.

(6) Selecting those portions of the contract consistent with the available MBEs and WBEs, including where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation.

(7) Making efforts to assist interested MBEs and WBEs in obtaining financing or insurance as required by the District for performance on the contract, when applicable.

(8) Using the services and assistance of the District; MBE and WBE assistance groups; local, state, and federal minority or woman business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs and WBEs.

(ii) Failure of a Bidder to provide requested information to the Administrator or to cooperate with the Administrator's investigation may be grounds for the rejection of a bid submission or a Waiver Request.

(iii) Upon completion of the investigation, the Administrator will inform the Director of his or her findings.

(iv) Thereafter, the Administrator will determine whether to grant the Waiver Request based on the Bidder's Good Faith Efforts at the time of the bid submission.

(v) Where the Administrator determines that a Bidder has not made Good Faith Efforts, the Director will declare the bid submission non-responsive and reject the bid.

(f) A Prime Contractor's submission of a Utilization Plan that commits to MBE or WBE participation equal to or greater than the Contract Goals does not provide a basis for a higher bid, an increase in contract price, or a later change order.

(g) The requirement to submit a Utilization Plan and MBE/WBE Subcontractor's Letter of Intent applies when the individual project is awarded under a Job Order Contract.

(i) A Prime Contractor awarded a Job Order Contract must submit with each work order issued under such a contract its Utilization Plan that lists the name, address, telephone number, electronic mail address, and contact person for each MBE and WBE to be used on the work order, as well as a description of work to be performed and the dollar amount to be allocated to the MBE or WBE. The Prime Contractor must submit with each work order a MBE/WBE Subcontractor's Letter of Intent from each certified business.

(ii) A Prime Contractor awarded a Job Order Contract will be subject to the compliance monitoring provisions contained in this Revised Appendix D. The Prime Contractor must submit to the Administrator monthly documentation, as specified by the Administrator, demonstrating that the Prime Contractor has attained the Contract Goals for the completed portion of the Job Order Contract or that it has been unable to do so despite its Good Faith Efforts. Good Faith Efforts must be documented as provided in this Revised Appendix D.

Section 16. Bid Submission Compliance Review

(a) The Director, in coordination with the Administrator, will declare a bid submission nonresponsive if a Bidder:

(i) Failed to submit with its bid a completed and signed Utilization Plan and signed MBE/WBE Subcontractor's Letter of Intent from each MBE and WBE listed on its Utilization Plan.

(ii) Failed to commit in its Utilization Plan to MBE and WBE participation equal to or greater than the Contract Goals unless the Bidder submitted with its bid a request a total or partial waiver of the Contract Goals.

(b) Where, after consultation with the Administrator, the Director determines that the Utilization Plan submitted by a Bidder is false or fraudulent, the bid will be rejected or, if the determination is made after the contract is awarded, the contract may be forfeited in accordance with the provisions of Article 28 of the General Conditions.

(c) Prior to the award of any contract, the Administrator will review the Utilization Plan, MBE/WBE Subcontractor's Letter of Intent, Letter of Certification, Contractor Information, and Waiver Request Form submitted by the apparent low Bidder and conduct any other investigation the Administrator deems appropriate to determine compliance.

(d) Within thirty (30) calendar days after request, the Prime Contractor must furnish executed copies of all MBE and WBE subcontracts to the Administrator. Subsequently, the Prime Contractor will obtain and submit a copy of all MBE and WBE contracts at all Tiers within five (5) calendar days of a written request.

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(e) The Prime Contractor will set timetables for the use of its Subcontractors before ten (10) percent of the work is completed. Timetables may be modified during contract performance with the prior written approval of the Administrator.

(f) If requested by the Administrator, the Prime Contractor must submit a MBE and WBE work plan projecting the work tasks associated with a certified business' commitments prior to the award of the contract. The work plan must provide a description of the work to be subcontracted to MBEs and WBEs and non-certified businesses and the dollar amount, as well as the name of all Tiers of Subcontractors. The work plan will become a part of the Prime Contractor's commitment and the contract record and may not be changed without prior written approval of the Administrator.

Section 17. Mentor-Protégé Program

The mentor-protégé program has been designed to encourage Prime Contractors to actively participate in the development and mentoring of MBE and WBE businesses. To motivate Prime Contractors to participate in the mentor-protégé program, the District will include a three (3) percent Contract Goal credit towards the applicable mentee category on all contracts to which this Revised Appendix D is applied. In addition to providing mentoring opportunities, the mentorprotégé program will also provide increased access to resources which will facilitate improved economic growth and greater contracting opportunities for the MBE or WBE protégé. The following guidelines will apply to the mentor-protégé program:

(a) The mentor/Prime Contractor will indicate that it wishes to participate in the mentorprotégé program in its bid submission for a District contract. This indication will be considered as an application to participate in the mentor-protégé program, and the application will be subject to the review and approval of the Administrator.

(b) The mentor and protégé must have a relationship independent of the District that preexists the mentor/Prime Contractor's bid application. The District will not facilitate a relationship between a mentor and a protégé.

(c) To qualify as a mentor, the Prime Contractor must present evidence that it has been operating in the market in which the protégé conducts business for at least five (5) years; is in good financial standing as determined by its federal tax returns or audited financial statements; and has not been debarred, suspended, or had its business license revoked.

(d) To qualify as a protégé, the Subcontractor must be a MBE and WBE as defined in this Revised Appendix D. Additionally, the protégé must have at least one (1) year of work experience in the market in which the mentor conducts business.

(e) A mentor may only have a total of three (3) protégés at any given time, and no more than one (1) protégé per contract. This information must be provided to the Administrator at the time that the bid application is reviewed.

(f) A protégé may only have one (1) mentor at any given time. This information must be provided to the Administrator at the time that the bid application is reviewed.

(g) A business may not serve as a mentor and a protégé at the same time.

(h) The mentor and protégé must be separate and distinct businesses. The mentor cannot possess an ownership interest in the protégé business, nor can the businesses be otherwise affiliated outside of the mentor-protégé relationship, including any familial relationship. The Administrator will review and assess the nature of the relationship to ensure that this requirement is fulfilled.

(i) If the mentor-protégé agreement is terminated during the pendency of the District contract on which the mentor-protégé relationship has been approved, it is the obligation of the mentor/Prime Contractor to notify the Administrator within three (3) calendar days of the termination. Failure to notify the Administrator within this required timeframe may result in the mentor/Prime Contractor being prohibited from participating in the mentor-protégé program on future contracts. In the event of termination, the mentor/Prime Contractor will cease to receive any credit or recognition for work performed by the protégé/Subcontractor from the point the agreement has been terminated, separate from any credit or recognition for which it is otherwise entitled.

(j) In the event of termination of the original mentor-protégé agreement, the mentor will not be permitted to engage with another protégé for the same District contract. Likewise, no substitutions of a protégé will be permitted.

(k) Any application to the mentor-protégé program will be denied if, in the opinion of the Administrator, the mentor-protégé relationship presents no opportunity for professional benefit to the protégé, but instead serves only as vehicle for the mentor to receive Contract Goal credits on a District contract. The Administrator's decision on this matter will be final and is not subject to appeal or review.

(1) Violation of any of the provisions contained in this section will result in the mentorprotégé application being denied, or in the event that information pertaining to a violation is discovered after the application is approved, permission to participate in the mentorprotégé program will be revoked. The Administrator's decision on this matter will be final and is not subject to appeal or review.

Section 18. Contract Performance Compliance

(a) Following the award of a contract, the Administrator will review the Prime Contractor's compliance with its MBE and WBE commitments during the performance of the contract.

(b) The Prime Contractor will be required to submit the Affirmative Action Monthly MBE/WBE Status Report providing the information in the written format specified by the Administrator. Evidence of MBE and WBE Subcontractor participation and payments must be submitted as required to confirm Subcontractors' participation and payment. The Prime Contractor's failure to do so may result in a finding of non-compliance by the Administrator pursuant to Section 20 of this Revised Appendix D. The Administrator reserves the right to require that the Affirmative Action Monthly MBE/WBE Status Report be submitted electronically via the compliance system upon notice.

(c) District contract compliance officers and auditors, or their designees, must have access to the Prime Contractor's and Subcontractor's Books and Records, including certified payroll records, bank statements, employer business tax returns, and all records including

all computer records and books of account to determine Prime Contractor and Subcontractor compliance with Program requirements. The District has the sole discretion to perform audits at any time and without notice to the Prime Contractor or Subcontractor. A Prime Contractor must provide the Administrator with any additional compliance documentation within ten (10) calendar days of receipt of a written request.

(d) If District personnel observe that any Subcontractor other than those listed on the Utilization Plan is performing work or providing materials or equipment for those MBE and WBE Subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing of an apparent violation and progress payments may be withheld. The Prime Contractor will have the opportunity to meet with the Administrator prior to a finding of non-compliance.

(e) The Prime Contractor is required to fill out the Supplemental Change Order Form or such other documents as the Administrator may require which details the names of the Subcontractors impacted and provides a description of the work and dollar amount of the change and the amended contract value. The Prime Contractor will submit the Supplemental Change Order Form along with any additional documents as required to the Administrator for approval.

(f) Where a partial or total waiver of the Contract Goals has been granted, the Prime Contractor must continue to make Good Faith Efforts during the performance of the contract to meet the Contract Goals, and the Administrator will provide technical assistance with respect to such efforts. The Administrator will require the Prime Contractor to provide documentation of its continuing Good Faith Efforts in attempting to fulfill the Contract Goals.

(g) The Prime Contractor cannot make any changes to the approved Utilization Plan without the prior written approval of the Administrator. This includes, but is not limited to, instances in which the Prime Contractor seeks to perform work originally designated for a MBE or WBE Subcontractor with its own forces or those of an Affiliate, a non-certified business, or another MBE or WBE. Failure to obtain the prior written approval of the Administrator will constitute a breach of the contract and subject the Prime Contractor to any and all available sanctions. Additionally, the participation of certified businesses that did not receive prior written approval by the Administrator will not be counted towards the Contract Goals.

(i) The Prime Contractor must demonstrate good cause to terminate or reduce the scope of work of the MBE or WBE to the satisfaction of the Administrator. Good cause is limited to the following circumstances:

(1) The listed MBE or WBE Subcontractor fails or refuses to execute a written contract.

(2) The listed MBE or WBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.

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(3) The listed MBE or WBE is ineligible to work on public works projects because of suspension or debarment proceedings pursuant to federal, state, or local law.

(4) The Administrator has determined that the listed MBE or WBE Subcontractor is not a responsible contractor.

(5) The listed MBE or WBE Subcontractor voluntarily withdraws from the project and provides the Administrator with prior written notice of its withdrawal before a decision on certification eligibility by the Administrator is rendered.

(6) The listed MBE or WBE Subcontractor is ineligible to receive credit for the type of work required.

(7) The MBE or WBE owner dies or becomes disabled rendering the business unable to complete the work on the contract.

(8) Other good cause as determined in the Administrator's sole discretion.

(ii) Good cause does not include instances where the Prime Contractor seeks to terminate a MBE or WBE so that the Prime Contractor can self-perform the work or substitute another MBE or WBE or non-certified Subcontractor to perform the work.

(iii) The Prime Contractor must give the MBE or WBE notice in writing, with a copy to the Administrator, of its intent to request to terminate or substitute, and the detailed reasons for the request. The Prime Contractor must give the MBE or WBE five (5) business days to respond to the notice and advise the Administrator of the reasons, if any, why the MBE or WBE objects to the proposed termination and why the Administrator should approve the request to terminate. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Administrator may require a response period shorter than five (5) business days.

(iv) If the Prime Contractor proposes to terminate or substitute a MBE or WBE Subcontractor for any reason, the Prime Contractor must make Good Faith Efforts as defined herein to find a substitute MBE or WBE Subcontractor to meet its MBE or WBE contractual commitment. Its Good Faith Efforts must be directed at finding another MBE or WBE to perform or provide at least the same amount of work, material, or service under the contract as the original MBE or WBE to the extent necessary to meet the Contract Goals.

(v) The Prime Contractor must submit a MBE/WBE Subcontractor's Letter of Intent for each proposed new MBE or WBE Subcontractor.

(vi) The Administrator will review the substitution request and decide whether to grant the request based on the Prime Contractor's documented compliance with these provisions.

(h) In the event that a Prime Contractor fails to achieve the level of MBE or WBE participation described in its Utilization Plan as demonstrated by its request for a progress payment, the Administrator will provide written notice to the Prime Contractor regarding the deficiency and progress payments may be withheld until compliance is achieved. If additional instances of non-compliance occur, subsequent progress payments may also be withheld pending compliance. Failure to meet the Contract Goals as stated on the Utilization Plan will be a *prime facie* case of non-compliance.

(i) In the event that a Prime Contractor fails to achieve the level of MBE or WBE participation described in its Utilization Plan as the result of the District's elimination of the work to be performed by a MBE or WBE, the Prime Contractor must notify the Administrator in writing and request an amendment of its Utilization Plan. A letter of release signed by the Subcontractor must be included with the request.

(j) The Contract Goal obligation extends to all contract work covered by change orders. The obligation to make Good Faith Efforts to meet the Contract Goal extends to the entire performance of the contract. When contract work is added, the Prime Contractor must award that work to the MBE or WBE listed in its Utilization Plan, if the original scope of work is to be performed by a MBE or WBE listed in the Utilization Plan. If the original listed MBE or WBE cannot perform the additional work, the Prime Contractor must make Good Faith Efforts to secure MBE or WBE Subcontractors to perform the additional contract work so that the goal percentage committed to in the contract is maintained or the Contract Goal is achieved.

(k) When the scope of Contract work is deducted, the Prime Contractor must make Good Faith Efforts to achieve the Contract Goal percentages committed to in the Contract.

(1) The Prime Contractor must notify the Administrator in writing within ten (10) calendar days of its determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE or WBE notice in writing, with a copy to the Administrator, of its intent to request a reduction in the scope of work, and the detailed reasons for the request. The Administrator will review the request for the reduction and decide whether to approve the request based on the Prime Contractor's documented compliance with these provisions.

(m) Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten (10) percent of the original contract value, the Prime Contractor will increase the utilization of all MBEs or WBEs, where feasible, so that the total value of the percentage of work performed by MBEs or WBEs as to increased contract value bears the same relationship to the total value of the contract, as modified by change orders, as the percentage of MBEs or WBEs utilization committed to in the Prime Contractor's original Utilization Plan.

Section 19. Compliance System

All contractors are to comply with Diversity's electronic compliance and monitoring system for reporting purposes. Failure to comply with these requirements may result in a finding

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of non-compliance by the Administrator pursuant to Section 20 of this Revised Appendix D. The reporting requirements include, but are not limited to:

(a) Prime Contractors are required to submit monthly Diversity spend numbers as well as make payments towards invoices submitted by Subcontractors, on a monthly basis.

(b) Subcontractors are required to submit invoices for their work and to acknowledge payment from Prime Contractors when received.

Section 20. Sanctions for Non-Compliance

(a) Where the Administrator believes that the Prime Contractor or Subcontractor has: committed fraud or made misrepresentations to the District; failed to comply with this Revised Appendix D or its contract; provided false or fraudulent documentation; or failed to comply with its Utilization Plan, the Administrator will notify the Prime Contractor and/or Subcontractor in writing of such determination of non-compliance and withhold up to one hundred (100) percent of the current progress or final payment due to the Prime Contractor. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE or WBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments. The Prime Contractor and/or Subcontractor will have the right to meet with the Administrator within ten (10) calendar days of receipt of the notice. After conference and conciliation, the Administrator will determine whether the Prime Contractor and/or Subcontractor is complying.

(b) If the Administrator determines that the Prime Contractor and/or Subcontractor is not in compliance and the violation cannot be resolved by conference and conciliation, the Administrator will refer the matter to the Executive Director. Upon review of the matter, the Executive Director may return the referral to the Administrator with direction on how to proceed or may direct that the Prime Contractor and/or Subcontractor participate in a Show Cause hearing on a date certain to explain why further sanctions should not be imposed.

(i) The Prime Contractor and/or Subcontractor will have ten (10) calendar days after receipt of the Show Cause notice within which to file a response in writing with the Administrator. A hearing before a duly appointed Hearing Officer will be convened to provide the Prime Contractor and/or Subcontractor an opportunity to be heard with respect to the non-compliance. Within twenty (20) calendar days after the Executive Director's referral, the Hearing Officer will schedule a hearing to be held within twenty (20) calendar days of receipt of the referral. The District will carry the burden of proof as to non-compliance by a preponderance of the evidence. An official record will be kept with the Clerk of the District. All filings by the District or the Prime Contractor and/or Subcontractor should be made with the Clerk of the District, with courtesy copies going to the parties and the Hearing Officer.

built in a streng (ii) The Hearing Officer will conduct the Show Cause hearing and issue findings of fact, conclusions of law, and recommendations regarding disposition of the hearing.

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Procedures and rules governing the Show Cause hearings will be followed as adopted by the Board of Commissioners.

(iii) All Show Cause hearings must be conducted on the record and all testimony must be under oath and transcribed verbatim by a court reporter. All parties will be given the opportunity to present and respond to evidence. The Hearing Officer will conduct a fair hearing and maintain order and will abide by the Judicial Canons of Ethics enacted by the Illinois Supreme Court.

(iv) Within thirty (30) calendar days after the Show Cause hearing, the Hearing Officer will issue in writing to the Executive Director his/her written findings of fact, conclusions of law as to compliance, and recommendations with respect to any appropriate sanctions. The Executive Director will transmit the Hearing Officer's findings, conclusions, and recommendations to the Board of Commissioners which may impose sanctions for a Prime Contractor's and/or Subcontractor's non-compliance with this Revised Appendix D including, but not limited to:

(1) Withholding up to fifty (50) percent of the current progress or final payment due the Prime Contractor until the Administrator determines that the Prime Contractor is in compliance. Following the withholding of up to fifty (50) percent of the current progress payment, up to one hundred (100) percent of further progress payments may be withheld until the Prime Contractor is found to be in compliance. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE or WBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments.

(2) Declaring the Prime Contractor and/or Subcontractor to be nonresponsible and disqualify/debar the Prime Contractor and/or Subcontractor from eligibility to bid on District Construction Contracts for a period of not less than one (1) year and not more than three (3) years. A business that is disqualified pursuant to the provisions of this Revised Appendix D will be precluded from participation on any District contract as a Prime Contractor, Subcontractor, and supplier for the period of disqualification. In cases involving the use of false documentation, the making of false statements, fraud or misrepresentation, the disqualification period will be not less than eighteen (18) months and not more than three (3) years for the second violation, and not less than two (2) years and not more than three (3) years for the third violation from the date of disqualification established by the Board of Commissioners' Order.

(3) Rejecting bid submissions by the Prime Contractor for other contracts not yet awarded when it is determined that the Prime Contractor participated in the use of false documentation, the making of false statements, or fraud or misrepresentation.

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(4) For any MBE or WBE that has misrepresented its MBE or WBE status and failed to operate as an independent business performing a Commercially Useful Function, declaration by the Director that the MBE or WBE is ineligible to participate as a MBE or WBE in District contracts. A business that has been declared ineligible may not participate as a MBE or WBE for a period of not less than one (1) year and not more than three (3) years.

(5) Forfeiting and deducting from the Prime Contractor's progress or final payments under the contract an amount up to the dollar amount of its MBE or WBE goal commitment that the Prime Contractor failed to meet. The amount to be deducted will be based upon a determination of the extent to which the Prime Contractor made Good Faith Efforts to achieve such commitments at the sole discretion of the Administrator.

(6) Referring the matter to the Office of the Attorney General or Cook County State's Attorney for follow-up action, where applicable.

(c) The District's attorneys' fees and costs may be assessed against the Prime Contractor and/or Subcontractor where the Hearing Officer makes a finding that the Prime Contractor and/or Subcontractor used false documentation, made false statements, or committed fraud or misrepresentation.

(d) Notice of sanctions imposed by the Board of Commissioners for violations of this Revised Appendix D by the Prime Contractor, Subcontractor, or supplier will be spread upon the public record by the District, including but not limited to publication in the Record of Proceedings of the Board of Commissioners, posting on the District's website, publication in any type of media or newspaper publication, and direct notice by letter to governmental entities.

(e) The District may take other action, as appropriate, within the discretion of the Administrator, subject to the approval of the Hearing Officer and the Board of Commissioners.

Section 21. Federal Regulations

The provisions of this Revised Appendix D shall not apply to any contract in which there will be monetary contributions received from a federal agency and the requirements of the federal agency dictate automatic compliance with that agency's affirmative action program. No language contained in this Revised Appendix D shall be interpreted to diminish or supplant the Equal Employment Opportunity Commission requirements.

Section 22. Reporting and Review

The Administrator will provide biannual reports to the Board of Commissioners containing the following information:

(a) The level of MBE or WBE participation achieved during the prior calendar year or other time period on District Construction Contracts subject to this Revised Appendix D; and

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(b) Identification of any difficulties with the enforcement of this Revised Appendix D; and

(c) Any recommendations with respect to improving the implementation of this Revised Appendix D.

Section 23. Sunset Provision

This Revised Appendix D will expire on December 31, 2027, unless the District finds its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against MBEs and WBEs so that the District will not function as a passive participant in a discriminatory marketplace in the District's Chicago construction industry and geographic market area.

Section 24. Repeal of Prior Inconsistent Provisions

All enactments and provisions previously adopted by the Board of Commissioners with regard to affirmative action on Construction Contracts subject to this Revised Appendix D that are inconsistent with the provisions contained in this Revised Appendix D are hereby expressly repealed.

Section 25. Severability

If any clause, sentence, paragraph, section, or part of this Revised Appendix D is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that judgment will not affect, impair, or invalidate the remainder of this Revised Appendix D and will be construed as if the clause, sentence, paragraph, section, or part had never been contained in this Revised Appendix D. The remaining language contained in this Revised Appendix D will remain in full force and effect. In lieu of such invalid, illegal, or unenforceable clause, sentence, paragraph, section, or part, there will be automatically added as part of this Revised Appendix D language as similar in its terms to such invalid, illegal, or unenforceable language as may be possible and be valid, legal, and enforceable.

Section 26. Effective Dates

This amendment to Revised Appendix D will be effective and apply to all bids for Construction Contracts advertised after December 31, 2022.

The provisions of this Revised Appendix D shall not apply in any contract in which there will be monetary contributions received from a federal agency and the requirements of the federal agency distance automatic compliance with that agency's afflerantive aution program. No language containest in this Revised Appendix D shall be interpreted to diminish or supplimit the fequal

Southin 22 Reporting and Review

The Administrator will provide bimmual reports to the Board of Commissioners containing day following information:

a) The level of MBE or WBE participation achieved during the prior calcular year or other time period on District Construction Contracts subject to diffs Revised Appendix D: and

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Exhibit B

ADOPTED:

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Kari K. Steele, President Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago

Approved as to form and legality:

Elev Avery

Head Assistant Attorney

ng l

General Counsel

EXHIBIT 5

VETERAN'S BUSINESS ENTERPRISE CONTRACTING POLICY, APPENDIX V

APPENDIX V

VETERAN-OWNED BUSINESS ENTERPRISE CONTRACTING POLICY REQUIREMENTS

Section 1. Purpose

The purpose of the Veteran-Owned Business Enterprise Contracting Policy ("Policy") is to increase contracting opportunities with the Metropolitan Water Reclamation District of Greater Chicago ("District") for veteran-owned and operated small business enterprises.

Section 2. Definitions

- (a) "Contract Goals" means the numerical percentage goals for MBE, WBE, and VBE participation to be applied to an eligible District contract subject to Affirmative Action Ordinance Revised Appendix D of the Metropolitan Water Reclamation District of Greater Chicago and this Appendix V for the participation of MBEs, WBEs, and VBEs based upon the scope of work of the contract and the availability of MBEs, WBEs, and VBEs to meet the goal, and the District's progress towards meeting its annual MBE and WBE goals.
- (b) "Eligible Veteran" means an individual who has been a member of the armed forces of the United States and served for a total of at least six (6) months, or for the duration of hostilities regardless of the length of engagement, and
 - (i) was discharged on the basis of hardship; or
 - (ii) was released from active duty because of a service-connected disability; or
 - (iii) was discharged under honorable conditions.

Former members of the military with the following type of discharges are excluded from the Policy:

- (i) dishonorably discharge; or
- (ii) bad conduct discharge; or
- (iii) general discharge under other-than-honorable conditions.
- (c) "Good Faith Efforts" means honest, fair, and commercially reasonable actions undertaken by a prime contractor or consultant to meet the VBE Contract Goal, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Contract Goals.
- (d) "Local Business" means a business located within the District's geographic market area as established by the 2021 Disparity Study, namely the counties of Cook, DuPage, Kane, Lake, McHenry, or Will, in the State of Illinois.
- (e) "Minority-owned Business Enterprise" or "MBE" means a local small business entity, including a sole proprietorship, partnership, corporation, limited liability company, joint venture, or any other business or professional entity, which is at least fifty-one (51) percent owned by one or more socially and economically disadvantaged individuals who are members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one (51) percent of the stock of which is owned by one or more members of one or more minority groups, and whose management, policies, major decisions, and daily business operations are controlled by one or more minority individuals.

Exhibit B

- (f) "Small Business Enterprise" or "SBE" means a small business as defined by the United States Small Business Administration (SBA), pursuant to the business size standard found in 13 CFR Part 121, that is relevant to the scope of work the business seeks to perform on District contracts. A business is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the business' previous five (5) fiscal years, exceed the size standards of 13 CFR Part 121.
- (g) "Veteran-owned Business Enterprise" or "VBE" means a local small business entity, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity, which is at least fifty-one (51) percent owned by one or more eligible veterans, or in the case of a publicly held corporation, at least fifty-one (51) percent of the stock which is owned by one or more eligible veterans, and whose control and management of the business including long-term goals for the company as well as day-to-day operations are controlled by one or more eligible veterans.
- (h) "Women-owned Business Enterprise" or "WBE" means a local small business entity which is at least fifty-one (51) percent owned by one or more socially and economically disadvantaged individuals who are women, or in the case of a publicly held corporation, fifty-one (51) percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. Determination of whether a business is at least fifty-one (51) percent owned by a woman or women will be made without regard to community property laws.

Section 3. Certification Eligibility

- (a) Only a business owned, managed, and controlled by an Eligible Veteran may be certified as a VBE.
 - (i) Ownership by one or more Eligible Veterans must be direct and unconditional; and
 - (ii) Subsidiaries owned or controlled by one or more Eligible Veterans is not acceptable.
- (b) For the purposes of this policy, there is no distinction between service-disabled and non-service disabled veteran-owned businesses.

Section 4. Contract Goals

- (a) The standard Contract Goal for VBEs is three (3) percent, unless otherwise specified in the language of the contract, specifically the Invitation to Bid. This goal is applicable to contracts awarded by the District where the total approved expenditure is in excess of one hundred thousand dollars (\$100,000.00).
- (b) VBE Contract Goals are separate and distinct from the MBE and WBE Contract Goals. An Eligible Veteran who is also a MBE or WBE may be utilized to fulfill the MBE, WBE, and VBE Contract Goals, as applicable. However, the three (3) percent VBE Contract Goal must be fulfilled in addition to the MBE and WBE Contract Goals set forth.
- (c) If a MBE or WBE is utilized to accomplish the VBE Contract Goal, the VBE commitment amount must be entered as a separate dollar amount on all contract documents.

Exhibit B

(d) VBE Contract Goals will only be applied to a contract when there are at least two (2) qualified VBE contractors or professional services consultants registered on the District's vendor list that are capable of performing the anticipated subcontracting functions of the contract.

Section 5. Good Faith Efforts

A prime contractor must undertake Good Faith Efforts to ensure that qualified VBE businesses are utilized in the performance of the contract and provide maximum opportunities for VBE participation, notwithstanding the fact that the contractor may have the capability to complete the contract without the use of subcontractors.

Section 6. VBE Commitment Form Submission

When completing a Utilization Plan for a contract bid document, a prime contractor must complete the VBE Commitment Form by doing the following:

- (a) Provide the name, contact information, and qualifications for prospective VBE businesses. Delineate the various anticipated categories and disciplines of services to be provided by VBE businesses and provide the dollar amount to be allocated to each business; and
- (b) Summarize commitment to comply with the VBE Contract Goal for the project. Compliance documents must be submitted as detailed in the bid solicitation. The Administrator will review compliance documents for each bid submission to determine whether it meets the requirements herein; and
- (c) Where a prime contractor or consultant is a business owned and controlled by a VBE or where the prime contractor or consultant utilizes a VBE in a joint venture or as a subcontractor, a prime contractor or consultant may count toward the achievement of its VBE Contract Goals the utilization of any VBE that also satisfies the definition of a SBE.

Section 7. Effective Date

This Policy is effective as of December 31, 2022 and applies only to qualifying contracts advertised after the effective date.

Adopted pursuant to an Order of the Board dated November 15, 2018

Revised May 1, 2023

EXHIBIT 6

M/WBE UTILIZATION PLAN

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

MBE/WBE UTILIZATION PLAN

For Local and Small business entities - Definitions for terms used below can be found in Appendix D: MBE - Section 5(u); WBE - Section 5(ff); SBE - Section 5(z).

NOTE: The Bidder shall submit with the Bid, originals or facsimile copies of all MBE/WBE Subcontractor's Letter of Intent furnished to all MBEs and WBEs. IF A BIDDER FAILS TO INCLUDE signed copies of the MBE/WBE Utilization Plan and all signed MBE/WBE Subcontractor's Letter of Intent with its bid, said bid will be deemed nonresponsive and rejected.

All Bidders must sign the signature page UP-4 of the Utilization Plan, even if a waiver is requested.

Name of Bidder:

Contract No.:

Affirmative Action Contact & Phone No.:

E-Mail Address:

Total Bid:

MBE/WBE UTILIZATION PLAN AND ALL SIGNED MBE/WBE SUBCONTRACTOR'S LETTER OF INTENT MUST BE COMPLETED, SIGNED AND ACCOMPANY YOUR BID!!!

MBE UTILIZATION

Name of MBE and contact person:			
Business Phone Number:	Email Address:		
Address:			
Description of Work, Services or Supplies to be provided:			
CONTRACT ITEM NO.:			
Total Dollar Amount Participation:			

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

MBE UTILIZATION

Name of MBE and contact person:

Business Phone Number: _____ Email Address: _____

Address:

Description of Work, Services or Supplies to be provided:

CONTRACT ITEM NO.:

Total Dollar Amount Participation:

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

MBE UTILIZATION

Name of MBE and contact person: Business Phone Number: _____ Email Address: _____ Address: _ Description of Work, Services or Supplies to be provided:

CONTRACT ITEM NO.:_____

Total Dollar Amount Participation:

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

(Attach additional sheets as needed)

Exhibit B

WBE UTILIZATION

Name of WBE and contact person:			
Business Phone Number:	Email Address:		
Address:	_		
Description of Work, Services or Supplies to be provided:			
CONTRACT ITEM NO.:			
Total Dollar Amount Participation:			

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

WBE UTILIZATION

Name of WBE and contact person:	
Business Phone Number:	Email Address:
Address:	
Description of Work, Services or Supplies to be provided:	

CONTRACT ITEM NO.:

Total Dollar Amount Participation:

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

WBE UTILIZATION

Description of Work, Services or Supplies to be provided:

CONTRACT ITEM NO.:

Total Dollar Amount Participation:

The MBE/WBE Utilization Plan and the MBE/WBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

(Attach additional sheets as needed)

Exhibit B

SIGNATURE SECTION

On Behalf of

(name of company)

____ I/We hereby acknowledge that

I/WE have read Revised Appendix D, will comply with the provisions of Revised Appendix D, and intend to use the MBEs and WBEs listed above in the performance of this contract and/or have completed the Waiver Request Form. To the best of my knowledge, information and belief, the facts and representations contained in this Exhibit are true, and no material facts have been omitted.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the bidder, to make this affidavit.

Date

Signature of Authorized officer

ATTEST:

Print name and title

Secretary

Phone number

1)<u>The Bidder is required to sign and execute this</u> page, EVEN IF A WAIVER IS BEING <u>REQUESTED.</u>

2)<u>Failure to do so will result in a nonresponsive bid</u> and rejection of the bid.

3)<u>If a waiver is requested, the bidder must also</u> complete the following "WAIVER REQUEST FORM."

The MBE/ WBE Utilization Plan and the MBE/ WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

WAIVER REQUEST FORM

If a waiver is requested, the Bidder is required to sign and execute this page.

Contract No.:

Name of Bidder:

Contact Person and Phone Number:

With respect to the contract specified above, the Bidder hereby requests a total or partial waiver of the requirement that, pursuant to Section 15 (a)-(d) of the Affirmative Action Ordinance, Revised Appendix D, it files a MBE/WBE Utilization Plan or achieve a particular goal for MBE/WBE participation in the contract. The reasons for the request are as follows:

On Behalf of

(name of company)

I/We hereby acknowledge that

I/WE have read Affirmative Action Ordinance, Revised Appendix D, will comply with the provisions of Affirmative Action Ordinance, Revised Appendix D, and intend to use the MBEs and WBEs listed in the MBE/WBE Utilization Plan in the performance of this contract and have completed the Waiver Request Form. To the best of my knowledge, information and belief, the facts and representations contained in this Waiver Request Form are true, and no material facts have been omitted.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

Date

Signature of Authorized officer

ATTEST:

Secretary

Print name and title

Phone number

NOTE TO BIDDERS

All Waiver requests are evaluated carefully by the District. The evaluation is based on your firm's documented GOOD FAITH EFFORTS.

The GOOD FAITH EFFORTS MUST be Undertaken PRIOR to your bid submittal to the District. Good Faith Efforts are identified on pp. D21-D22, Section 15. Utilization Plan Submission (e), (i)(1)-(8).

The MBE/ WBE Utilization Plan and the MBE/ WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

UP-5

Exhibit B

MBE/ WBE SUBCONTRACTOR'S LETTER OF INTENT

To: (Name of Bidder) ______ and the MWRDGC RE: Contract Name:(Insert Name) ______ Contract Number: (Insert Number) ______ From: (Name of MBE/WBE Firm) ______ MBE: Yes___ No___ WBE: Yes___ No___

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification. A certification letter must be attached hereto.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

If more space is needed to fully describe the MBE/WBE firms' proposed scope of work and/or payment schedule, attach additional sheets.

The above described performance is offered for the following total price:

\$

(Written in Figures)

(Written in Words)

In the event of a discrepancy between the "Written in Words" price and the "Written in Figures" price, the "Written in Words" price shall govern."

The undersigned will enter into a formal written agreement for the above work with the Prime Contractor, conditioned upon the execution of a contract by the Prime contractor with the MWRDGC.

(Signature of Owner, President or Authorized Agent of MBE/WBE)

Name/Title (Print)

Date

Phone

THIS SIGNED DOCUMENT MUST BE SUBMITTED WITH THE BID. FAILURE TO DO SO WILL RESULT IN A NONRESPONSIVE BID AND REJECTION OF THE BID.

All bidders shall submit with the Bid, copies of MBE/WBE Subcontractor's Letter of Intent in paper form with signatures, which were furnished to each MBE and WBE listed in its MBE/WBE Utilization Plan and must be submitted to the District with its bid as part of its bid packet with either a copy of each MBE and WBE current Letter of Certification from a state or local government or agency or documentation demonstrating that the MBE and WBE is a MBE or WBE within the meaning of this Revised Appendix D. Failure to submit the MBE/WBE Subcontractor's Letter of Intent signed by each MBE and WBE subcontractor will be viewed as nonresponsive and the bid will be rejected. All MBE/WBE Subcontractor's Letter of Intent signal or facsimile copy of MBE/WBE Subcontractor's Letter of Intent will be acceptable.

The MBE/ WBE Utilization Plan and the MBE/ WBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

Exhibit B

EXHIBIT 7

VBE COMMITMENT FORM

VBE COMMITMENT FORM

1.	Name of VBE:		
	Identify MBE, WBE Status: Address:		
	City, State, Zip Code:		
	Contact Person:		
	eMail Address:		
	*Dollar Amount of Participation: \$	Percent of Participation:	%
	Scope of Work:		
2.	Name of VBE:		
	Identify MBE, WBE Status: Address:		
	City, State Zip Code:		
	Contact Person:	Telephone Number:	
	eMail Address:		
	*Dollar Amount of Participation: \$	Percent of Participation:	%
	Scope of Work:		
3.	Name of VBE:		
	Identify MBE, WBE Status: Address:		
	City, State Zip Code:		
	Contact Person:	Telephone Number:	
	eMail Address:		
	*Dollar Amount of Participation: \$	Percent of Participation:	%
	Scope of Work:		
4.	Name of VBE:		
	Identify MBE, WBE Status: Address:		
	City, State, Zip Code:		
	Contact Person:		
	eMail Address:		
	*Dollar Amount of Participation: \$	Percent of Participation:	%
	Scope of Work:		

* If a MBE or WBE will be utilized to accomplish the VBE Contract Goal, then the VBE commitment amount must be entered as a separate dollar amount. VBE Contract Goals are separate and distinct from the MBE and WBE Contract Goals.

Attach a copy of qualifications for each VBE business.

EXHIBIT 8

AFFIRMATIVE ACTION STATUS REPORT

AFFIDAVIT - AFFIRMATIVE ACTION STATUS REPORT

Notice: This report is required to be submitted at 25%	6, 50%, 75% and 100% completion of construction.
Contract Title:	
Contract Number:	
Prime Contractor's Name:	
Prime's Contact Name:	Estimated Completion Date:
Prime's Contact Phone#: ()	Status Report No.: <u>25% - 50% - 75% - 100%</u> (CIRCLE ONE)
In connection with the above-captioned contract:	(CIRCLE ONE)

For each MBE or WBE subcontractor, including third tier contracts awarded by your MBE or WBE company, describe the work or goods or services provided in relation to this contract (indicate line items, if applicable) performed during the reporting period.

MBE or WBE Subcontractor	MBE/WBE	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
DESCRIPTION OF WORK/SERVICES AND/OR GOODS PROVIDED. BE SPECIFIC.			

MBE or WBE Subcontractor	MBE/WBE	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
DESCRIPTION OF WORK/SERVICES AND/OR GOODS PROVIDED. BE SPECIFIC.			

MBE or WBE Subcontractor	MBE/WBE	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
DESCRIPTION OF WORK/SERVICES AND/OR GOODS PROVIDED. BE SPECIFIC.			1

MBE or WBE Subcontractor	MBE/WBE	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
DESCRIPTION OF WORK/SERVICES AND/OR GOODS PROVIDED. BE SPECIFIC.			

MBE or WBE Subcontractor	MBE/WBE	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
DESCRIPTION OF WORK/SERVICES AND/OR GOODS PROVIDED. BE SPECIFIC.			

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE CONTRACTOR. TO MAKE THIS AFFIDAVIT. I CERTIFY THAT THE ABOVE NAMED FIRM WAS AWARDED CONTRACT(S), PERFORMED THE WORK WITH THEIR OWN FORCES, AMOUNTS LISTED ARE ACCURATE AND PAYMENTS WERE MADE IN ACCORDANCE WITH CONTRACTUAL OBLIGATIONS. CANCELLED CHECKS AND/OR SUPPORTING INFORMATION WILL BE ON FILE FOR INSPECTION OR AUDIT.

Name of Affiant:	
Title:	
Signature:	
(Signature of Affiant)	
Date:	
State of	
County (City) of	
This instrument was SUBSCRIBED and SWORN TO before me on	(date)

Signature	of Notary	Public
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EXHIBIT 9

OPERATION AND MAINTENANCE PLAN, INSPECTION LOG

Operations and Maintenance Plan

City of Des Plaines

Craig Manor Flood Control Project

<mark>October 2024</mark> (CBBEL Project No. 230004)

Introduction

This Operations and Maintenance Plan is in reference to the City of Des Plaines Craig Manor Drainage Improvement Plans Set dated XXXX, prepared by Christopher B. Burke Engineering, Ltd. 6/20/24

Annual Maintenance and Management Tasks

This plan is designed to be adaptive to changing site conditions observed through periodic monitoring of the site. The monitoring visits are important to determine the annual tasks needed. Those tasks are then completed and evaluated for effectiveness. Follow-up tasks are then defined and completed as necessary.

Annual maintenance and management tasks include periodic monitoring. Periodic monitoring visits are recommended to assess the site conditions and to determine the extent of each task to be completed in any given year for this underground storage system. We recommend at least 1 monitoring and maintenance visits each year. The following matrix lists recommended regular maintenance and management activities to be completed according to schedule.

TASK	Jan-Mar	Apr	May-June	Jul	Aug- Sept	Oct	Nov	Dec
Monitoring Visits		X				X		
Debris Management			-			X		
Storm water								
Structure						X		
Maintenance		ç					. e	ē
Underground								
Storage system						X		
maintenance								

Table 1. Recommended Maintenance and Management Tasks Schedule

1. <u>Site Monitoring Visits:</u> Annual site monitoring visits shall be completed to determine if the water control structures are functioning properly, and to assess the overall condition of the Underground Storage System and appurtenances. Any deficiencies should be documented along with recommendations for appropriate remediation or remedied during the visits. The results of each visit should be summarized in a short report with photographs for record keeping.

Page 1 of 2

- 2. <u>Debris Management</u>: As this is a closed, underground system all debris management is covered under Stormwater Structure Maintenance.
- 3. <u>Stormwater Structure Maintenance</u>: All stormwater catch basins connecting into underground storage system shall be inspected, cleaned out and/or repaired annually to prevent clogging and potential flooding. This will be especially important in late fall. Maintenance staff should visit the site on a regular basis to monitor the blockage of inlets and outlets, including removal of debris from stormwater openings.
- 4. <u>Underground Storage System Maintenance</u>: Underground Storage System shall be inspected via access lids, and the system cleaned out and/or repaired annually as needed to prevent clogging and potential reduced capacity.
- 5. <u>Soil Erosion Control Management</u>: As this is a closed, underground system all soil erosion control management is covered under Stormwater Structure Maintenance.
- 6. <u>Invasive Weed Control</u>: As this is a closed, underground system all invasive weed control is covered under Stormwater Structure Maintenance.
- 7. <u>Recordkeeping</u>: Records of management activities should be maintained by the designated stewardship committee or person(s). Records may include a review of management activities and their results, including photo documentation and the proposed actions for the next year.

End of O&M Plan.

EXHIBIT 10

PROJECT SITE PROPERTY INTEREST DOCUMENTS OR AFFIDAVIT

STATE OF ILLINOIS

COUNTY OF COOK

AFFIDAVIT OF OWNERSHIP

Dorothy Wisniewski _____, being first duly sworn on oath, deposes and says: (Print Name of Affiant)

1. I am the <u>City Manager</u> of the City of Des Plaines (City), and duly authorized to (Print Title)

execute and deliver this affidavit to the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") for the purpose of establishing the dedication of, or ownership over, the Project site for which the parties have entered into an Intergovernmental Agreement ("IGA"), described and referred to as:

DESIGN, CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE CRAIG MANOR DRAINAGE SYSTEM IMPROVEMENTS IN DES PLAINES, ILLINOIS

(IGA Title)

- 2. I caused a search of reasonably accessible real property records to be conducted, and that no evidence of dedication, perpetual easement, or ownership of the Project site was found, thus necessitating execution of this affidavit.
- 3. The City represents that the site on which the Project will be constructed ("Project site") lies entirely within a dedicated public right-of-way, perpetual easement, or property owned solely by the City and is located

at: CRAIG MANOR PARK, 800 MADELYN DR AND RIGHT OF WAY AREAS ON PORTIONS OF MADELYN DR AND MARK AV IN DES PLAINES, ILLINOIS

(Print Street Address)*

- 4. The City represents that the most current Cook County Tax map (also known as "Sidwell map") depicting the area(s) encompassing the entire Project site can be found at <u>www.cookcountyclerk.com</u> and confirms paragraph 3 above.
- 5. The City represents that it will maintain an exclusive and uninterrupted property interest the Project site as a dedicated public right-of-way, perpetual easement, or solely owned property for the duration of the IGA term.
- 6. The City will immediately advise the District in writing of changes or modifications to the information disclosed in this Affidavit.
- 7. This Affidavit is made for the purpose of complying with Article 4 paragraph 1 of the IGA.

ATTEST:

Clerk

Date

(Affiant)

Exhibit B

Page 172 of 172



PUBLIC WORKS AND ENGINEERING DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5390 desplaines.org

MEMORANDUM

Date:	June 6, 2024		
To:	Dorothy Wisniewski, City Manager		
From:	Jarek Wojtaniec, Director of Information Technologies J^{N}		
	Timothy Watkins, Assistant Director of Public Works $\mathcal{T}\mathcal{U}$		
Cc:	Timothy Oakley, P.E., CFM, Director of Public Works and Engineering		
Subject:	Sentinel Technologies, Inc Professional Services Master Contract		

Issue: The Information Technologies and Public Works and Engineering Departments request a Master Contract with Sentinel Technologies, Inc. for professional services.

Analysis: Sentinel Technologies, Inc. provides a variety of technological services for the City. These services include system integrations and cybersecurity services. The Master Contract allows the City to enter into professional service Task Order agreements with the consultant to perform a variety of technology services. The Task Order agreements are presented individually for approval.

The City is required to comply with various Department of Homeland Security standards as well as standards set forth by the City's insurance carrier. Sentinel has provided Task Order #1 for integration and cybersecurity services to assist with achieving these benchmarks in the amount of \$67,981.74.

Recommendation: We recommend approval of a new 3-year Master Contract with Sentinel Technologies, Inc., 2550 Warrenville Road, Downers Grove, Illinois 60515 for professional services. We also recommend approval of Task Order #1 in the amount of \$67,981.74. Source of funding will be the Risk Management Fund.

Attachments:

Resolution R-113-24 Exhibit A - Master Contract Exhibit B - Task Order No. 1

CITY OF DES PLAINES

RESOLUTION R - 113 - 24

A RESOLUTION APPROVING A MASTER CONTRACT AND TASK ORDER NO. 1 WITH SENTINEL TECHNOLOGIES, INC. FOR PROFESSIONAL TECHNOLOGICAL CONSULTING SERVICES.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, Sentinel Technologies, Inc. ("Consultant") provides a variety of consulting services, including technological services for system integrations and cyber-security ("Consulting Services"); and

WHEREAS, the City desires to enter into a three-year master contract with Consultant to perform Consulting Services as required by the City ("*Master Contract*") pursuant to task orders issued by the City in accordance with Chapter 10 of Title 1 of the City Code of the City of Des Plaines, the City's purchasing policy, and the Master Contract; and

WHEREAS, Consultant has provided a proposal for integration and cybersecurity services as required to comply with various Department of Homeland Security standards as well as standards set forth by the City's insurance carrier (collectively, the *"Technological Consulting Services"*); and

WHEREAS, the City desires to enter into Task Order No. 1 under the Master Contract with Consultant for the performance of the Technological Consulting Services, in the not-to-exceed amount of \$67,981.74 ("*Task Order No. 1*"); and

WHEREAS, in accordance with Chapter 10 of Title 1 of the City Code of the City of Des Plaines and the City purchasing policy, City staff has determined that the procurement of the Technological Consulting Services does not require competitive bidding because the Technological Consulting Services require a high degree of professional skill and judgment where the ability or fitness of the individual plays an important part; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Master Contract and Task Order No. 1 under the Master Contract with Consultant;

WHEREAS, the City Council has determined that is in the best interest of the City to enter into the Master Contract with Consultant;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

<u>SECTION 2</u>: <u>APPROVAL OF MASTER CONTRACT</u>. The City Council hereby approves the Master Contract in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

SECTION 3: <u>AUTHORIZATION TO EXECUTE MASTER CONTRACT</u>. The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the final Master Contract.

SECTION 4: APPROVAL OF TASK ORDER NO. 1. The City Council hereby approves Task Order No. 1 in substantially the form attached to this Resolution as **Exhibit B**, and in a final form to be approved by the General Counsel.

<u>SECTION 5</u>: <u>AUTHORIZATION TO EXECUTE TASK ORDER NO. 1</u>. The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, final Task Order No. 1.

SECTION 6: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

[SIGNATURE PAGE FOLLOWS]

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Resolution Approving Master Contract and Task Order No 1 with Sentinel Technologies 2024-2027

CITY OF DES PLAINES MASTER SERVICES AGREEMENT FOR NETWORK AND CYBERSECURITY SERVICES

THIS MASTER SERVICES AGREEMENT ("Master Agreement") is dated as of , 2024 ("Effective Date") and is by and between the CITY OF DES PLAINES, an Illinois home rule municipal corporation ("City") and SENTINEL TECHNOLOGIES, INC., an Illinois corporation ("Consultant").

N 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. SCOPE OF CONSULTING SERVICES.

A. <u>Intent: Conflicts.</u> It is the intent of the parties that this Master Agreement govern the relationship of the parties. Specific terms related to a project will be contained in a task order as provided in Section 1.C. In the event of a conflict between the provisions of this Master Agreement and any task order, then provisions of the task order will apply and control.

B. Definitions.

"Deliverables": may include, without limitation, configuration, hardware, and corresponding documentation.

"Services" means, collectively, the services, Deliverables, duties and responsibilities described in the Task Order and any and all work, labor, transportation, equipment, materials, apparatus, information, data and other items necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Site": A City-owned or managed location, building, or facility, which will have network requirements.

"Project" means the Services to be performed under a specific Task Order.

C. <u>Task Orders</u>. The Consultant will perform services for the City from time to time as set forth in written task orders issued by the City on a project-by-project basis ("Services"), provided, however, that any task order in an amount exceeding \$25,000 must be approved by the City's Corporate Authorities. A task order will be in the form generally as provided in *Exhibit A* attached to and by this reference incorporated into this Master Agreement ("*Task Order'*) and in final form acceptable to the City and executed by the Parties. Each Task Order will include the Services to be performed under that Task Order (collectively a "*Projecf'*).

D. <u>Project Time.</u> Each Task Order will include a time schedule for the Project (a **"Project Schedule"**) including without limitation a date for completion of the Project (the **"Project Completion Date"**).

E <u>Term; Extensions.</u> This Master Contract commences on the Effective Date and terminates on December 31, 2027 unless terminated earlier pursuant to Section 7 of this Master Agreement (the **"Term");** provided, however, if there are any active Task Orders in place at the

time of the termination of the Master Contract term, the Term shall be extended through the expiration date of those Task Order(s). All terms of this Master Agreement, including without limitation, pricing terms, are firm during the Term, unless a change is explicitly agreed to by the City in a Task Order. The Parties may extend this Master Agreement for two additional one-year periods (each an *"Extended Term"*) by mutual agreement. Pricing terms may be adjusted by agreement at the beginning of an Extended Term.

F. <u>No Guarantee of Work: Other Contracts.</u> This Master Agreement does not guarantee that the Consultant will be awarded Projects by the City, and the City has no duty or obligation to award Projects to the Consultant. Also, the City may enter into master contracts with other consultants, pursuant to which the City may award work from time to time at the City's discretion.

G. <u>Responsibility of Consultant.</u> The Consultant must provide all personnel necessary to complete the Services in compliance with Section 3 of this Master Agreement.

H <u>Financial Ability to Perform.</u> Each time when executing a Task Order, the Consultant represents and declares that it is financially solvent, has the financial resources necessary, has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Project set forth in the relevant Task Order in full compliance with, and as required by or pursuant to, the relevant Task Order and this Master Agreement.

SECTION 2 COMPENSATION AND METHOD OF PAYMENT.

A. <u>Pricing Schedule.</u> As compensation for the performance of the Services ("Compensation"), the City will pay the Consultant the amounts set forth in the applicable Task Order (*"Project-Specific Pricing"*). Except for the Project-Specific Pricing, the City will have no liability for any expenses or costs incurred by the Consultant.

B. <u>Monthly Payment: Invoices.</u> The Compensation for a Project will be paid in monthly installments. The Consultant must submit to the City, on a monthly basis unless the Parties agree in a Task Order to a different schedule, a written invoice for payment for completed work. The City may specify the specific day of the month on or before which invoices must be filed. Each invoice must be accompanied by receipts, vouchers, and other documents as necessary to reasonably establish the Consultant's right to payment of the Compensation stated in the invoice. In addition, each invoice must include (a) employee classifications, rates per hour, and hours worked by each classification and, if the Project is to be performed in separate phases, for each phase, (b) total amount billed in the current period and total amount billed to date and, if the Project is to be performed in separate phases, for each phase, and (c) the estimated percent completion of the Project and, if the Project is to be performed in separate phases.

C. <u>Records.</u> The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the authorized representative of the City to inspect and audit all data and records of the Consultant for work done under the Agreement pursuant to a Task Order. The records shall be made available to the City at reasonable times during the Agreement period, and for three years after the termination of this Master Agreement.

D. <u>Taxes, Benefits and Royalties.</u> The Compensation 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.

E <u>Final Acceptance.</u> 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 3. TASK CHANGE ORDERS: DELAYS

A. <u>Task Change Orders.</u> The City, from time to time, may issue a written order modifying or otherwise changing the scope of the Services included in a Task Order (a *"Task Change Order"*) provided, however, that any Task Change Order in an amount exceeding \$25,000 must be approved by the City Council. The Task Change Order will be generally in the form attached to and by this reference incorporated into this Master Contract as *Exhibit* **C**. The Consultant may request a Task Change Order based on a material change to a Project or any Services required as part of a Project. A Task Change Order may include additions to and deletions from the Services and will include any equitable increases or decreases to the Compensation for the Project.

B. <u>Revision Notices.</u> Within 10 days after the date of a Task Change Order, and in any event before the Consultant begins work on any changed Services, the Consultant must notify the City in writing if the Consultant desires a revision to the Task Change Order (a *"Revision Notice"*). The Revision Notice must clearly state the Consultant's requested revisions and the reasons for the revisions. If the City agrees to any revision, then the City will issue a revised Task Change Order in a form acceptable to the Parties. If the Consultant does not submit a Revision Notice within the 10-day period, then the Consultant will be deemed to have accepted the Task Change Order and the Task Change Order will be final.

C. <u>Disagreements over Task Change Order Terms.</u> If the City and the Consultant cannot agree on the proposed revisions to the Compensation or Project Schedule terms of a Task Change Order, then the Parties will apply the dispute resolution provisions of this Master Contract in order to reach agreement. In that event, the Consultant must proceed diligently with the revised Services as directed by City pending resolution of the disagreement. The Consultant will be compensated equitably for the work the Consultant undertakes during the disagreement resolution process.

D. <u>No Change in Absence of Task Change Order.</u> No claim for an adjustment in Compensation or Project Schedule will be made or allowed unless it is embodied in a Task Change Order signed by the City and the Consultant. If the Consultant believes it is entitled to an adjustment in the Compensation or Project Schedule terms that has not been included, or fully included, in a Task Change Order, then the Consultant may submit to the City a written request for the issuance of, or revision of, a Task Change Order including the desired adjustment. The Consultant's request must be submitted before the Consultant proceeds with any Services for which an adjustment is desired.

E <u>Delays.</u> If a delay in providing Services results from one or more causes that could not be avoided or controlled by the Consultant, then the Consultant may be entitled to an

extension of the Project Schedule for a period of time equal to that delay, or an adjustment in Compensation for extra costs related to the delay, or both. The Consultant must notify the City in writing within 10 days after the start of the delay and again in writing within 10days after the delay has ended (the **"Delay Period"**). The first notice must state the cause or causes of the delay and the impact of the delay on providing Services. The second notice must state the cause or causes of the delay, the length of the day, the reasons why the delay disrupted performance of the Services and the Consultant's request, if any, for a change in Compensation or Project Schedule. If the Consultant fails to submit notices as provided in this Section 4.5, then the Consultant will be deemed to have waived any right to an adjustment in Compensation for the Services.

SECTION 4. PERSONNEL; SUBCONTRACTORS.

A. <u>Key Project Personnel.</u> The Key Project Personnel identified in each Task Order shall be primarily responsible for carrying out the Services on behalf of the Consultant. The Key Project Personnel shall not be changed without the City's prior written approval.

B. <u>Availability of Personnel.</u> The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in the relevant Task Order. 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. <u>Approval and Use of Subcontractors.</u> 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 Master Agreement and the relevant Task Order in the same manner as if performed by employees of the Consultant. For purposes of this Master 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 Master Agreement.

D. <u>Removal of Personnel and Subcontractors.</u> 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 set forth in the Relevant Task Order for a delay or extension of any Project Completion Date as a result of any such removal or replacement.

E <u>Non-Solicitation</u>. During the term of this Agreement and for a period of one (1) year thereafter, each party agrees not to knowingly solicit for hire, or hire, any employee of the other party having any direct involvement with the provision of the Services under this Agreement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. In the performance of this Agreement, the parties may have access to or receive certain information in the possession of the other party that is not generally known to members of the public ("Confidential Information"). The parties acknowledge that Confidential Information includes, but is not limited to, proprietary information, copyrighted material, educational records, employee data, financial information, information relating to health records, residential and commercial utility account data, and other information of a personal nature. Each party shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("Work Producf") without the prior written consent of the other party except as provided in Section 5.B of this Master Agreement. Each party will use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any Confidential Information received from or on behalf of the other party. Upon the expiration or termination of this Agreement, each party shall promptly cease using and shall return or destroy (and certify in writing destruction of) all Confidential Information furnished by the other party along with all copies thereof in its possession including copies stored in any computer memory or storage medium; provided however that the City may retain documents as necessary to comply with the Local Records Act.

Dissemination of Information. Each party shall not disseminate any information B. obtained in performance of Services to a third party without the prior written consent of the other party; provided however that the City may disclose documents necessary to comply with the Freedom of Information Act, court order, or as may otherwise be required by law in good faith reliance upon the advice of its legal counsel without obtaining prior written consent of Consultant. Each party shall not issue publicity news releases or grant press interviews during or after the performance of the Services, except as may be required by law or with the prior written consent of the other party. If a party is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information and/or Work Product which may be in its possession as a result of Services provided under this Agreement, such party shall immediately give notice to the other party with the understanding that the other party shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The parties shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is guashed or withdrawn, or the time to produce is otherwise extended. Each party shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by it under this Agreement.

C. <u>Ownership.</u> With the exception of those Deliverables specifically subject to a subsidiary license agreement between Consultant and the City, Consultant agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. § 101 et seq. To the extent any Work Product does not qualify as a "work for hire," Consultant irrevocably grants, assigns, and transfers to the City all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information, and Work Product shall at all times be and remain the property of the City. Consultant shall execute all documents and perform all acts that the City may request in order to assist the City in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. All of the foregoing items shall be

delivered to the City upon demand at any time and in any event, shall be promptly delivered to the City upon expiration or termination of this Agreement within three (3) business days of demand. In addition, Consultant shall return the City's data in the format requested by the City. If any of the above items are lost or damaged while in Consultant's possession, such items shall be restored or replaced at Consultant's expense.

D. <u>Injunctive Relief.</u> In the event of a breach or threatened breach of this Section 12, each party acknowledge and agree that the other party would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, each party agrees that the other party shall be entitled to seek immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the parties may have in equity, by law or statute.

E <u>Freedom of Information Act.</u> Consultant acknowledges that this Agreement and all documents submitted to the City related to the Agreement award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state or federal laws now existing or adopted later. The City will make all reasonable and lawful efforts to assert applicable and valid exemptions from disclosure for information and records that Consultant designates as trade secrets or commercial or financial information furnished to the City under a claim that such information or records are proprietary, privileged, or confidential.

F. <u>Survival.</u> The provisions of this Section shall survive the termination or expiration of the Agreement.

SECTION 6. CITY SITES.

A. <u>Consultant's Personnel.</u> Consultant will be responsible for the acts of its employees, agents, and subcontractors while on the City's property and within the City Sites. Accordingly, Consultant will take all necessary measures to prevent injury and loss to persons or property located on the City's property. Consultant shall be responsible for all damages to persons or property caused by Consultant or any of its employees, agents, or subcontractors. Consultant shall promptly repair, to the specifications of the City, any damage that it, or its employees, agents, or subcontractors may cause to the City's property. If Consultant fails to perform the repairs required by this Section, the City may repair such damage and Consultant shall reimburse the City promptly for the reasonable costs of repair.

B. <u>Notification to City.</u> If an accident of any kind occurs, Consultant will immediately notify the City Project Manager and thereafter, if requested, furnish a full written report of such accident.

C. <u>No Interference.</u> Consultant shall perform the Services without interfering in any way with the activities of the City's staff, visitors or residents.

D. <u>Right of Entry: Limited Access.</u> Consultant and any of its employees, agents, or subcontractors performing Services shall be permitted to enter upon City property in connection with the performance of the Services, subject to those rules established by the City. Consultant shall provide advance notice to the City whenever applicable, of any such intended entry. Consent to enter upon a City facility given by the City shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the City. Consultant and its employees, agents, and subcontractors shall have the right to use only those facilities of the City that are necessary

to perform the Services and shall have no right to access any other facilities of the City. Consultant shall use, and shall cause each of its employees, agents, and subcontractors to use the highest degree of care when entering upon any property or facility owned by the City in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

E <u>Risk of Loss.</u> The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Consultant or its employees, agents, or subcontractors.

SECTION 7. TERMS OF USE - CITY NETWORKS.

As may be required under a Task Order, Consultant, with the advance written consent of the City, may have access to the City's network, telecommunications, computer, and data resources ("City Networks"), subject to the following terms and conditions:

A <u>Account Authorization.</u>

- 1. All employees, agents, or subcontractors of Consultant that are allowed to access the City's Networks ("Users") must be individually approved by the City Representative.
- 2. Security controls will not be circumvented by Users to escalate account privileges or to create accounts not otherwise approved through the appropriate processes.
- 3. Users may only operate and use the City's Networks in full compliance with the City's use policies and procedures.

B. <u>Workstation Security.</u> Any workstations owned by Consultant that are connected to the City's networks whether internally or remotely:

- 1. Must be maintained and secure;
- 2 Must have all current security patches and fixes applied in a timely manner;
- 3. Must have updated anti-virus software; and
- 4. Must prevent unrestricted access, primarily implemented via a login process combined with a password protected screen saver, that adheres to password complexity requirements, and are set to engage in a reasonably short period of time.

C. <u>Restrictions.</u> Remote access to the City's Networks is restricted to explicitly defined resources and identified Users of Consultant and is subject to advance written approval by the City Representative, or his or her designee. Consultant will not knowingly incorporate into any Deliverables any "back door" password or other method of remote access to the City Networks. Any and all access to any software code residing on the City's Networks must be granted by the City to the Consultant, at the City's sole discretion.

D. <u>Application Security.</u>

- 1. All applications will be built so that data security is designed into the application.
- 2 User accounts and authentication for applications will be tied to the City's directory services architecture.
- 3 All applications developed for the City will have third-party security audits as part of the testing and acceptance process. Successful passing of a third-party security audit will be a precondition for acceptance of any application.
- 4. The City will be permitted to perform its own security audit. Consultant will address all security issues discovered in a timely manner, either by correcting the issue or providing a detailed explanation of why the issue should not be addressed. The City Project Manager will make the final determination as to whether or not a security issue needs to be corrected by Consultant and Consultant will comply with the City Project Manager's directive to correct any and all security issues.
- 5. Applications that provide varying levels of access to City data are required to have stringent access controls with clear and consistent access policies for users. Access control will be role-based and tied to the City's directory services as well as defined by group memberships for ease of assigning rights.
- 6. Application systems that house confidential or restricted data will be built or modified to have mechanisms that provide monitoring and logging functions in order to detect and log inappropriate access or access attempts to confidential or restricted data.
- 7. Confidential and restricted data must be encrypted and remain encrypted when stored and transmitted by an application.
- 8 Where applicable, applications will display a "terms of use" banner to users accessing the System.

E <u>Data Usage.</u> All Users, regardless of other duties and position, have the following responsibilities regarding the use of information stored on, entered into, or compiled by, the City Networks ("City Data").

- 1. *Pertinent Use of Data.* City Data may be only used to conduct City business. Using City Data for personal use or for professional use unrelated to City business is prohibited.
- 2 *Privacy and Confidentiality of City Data.* All Users will ensure the confidentiality of City Data with which they work as described in Section 5.A above. Consultant users will respect the City's control measures used to protect confidential and restricted City Data and will not circumvent these measures.

- 3. Accuracy of City Data: All Users will ensure that all City Data is kept in an accurate state and will not misrepresent City Data.
- 4. Storage of City Data: Unless encrypted, no personal City Data will be transferred to or stored on any laptop or portable computer. Consultant will also not be in possession of City Data in any form when not at a City facility.

If Consultant violates the terms of this Section 7, Consultant may have its system access privileges suspended and may further be subject to termination of this Agreement or be subject to any other remedy or action deemed appropriate by the City.

SECTION & WARRANTY: INDEMNIFICATION: INSURANCE.

A. <u>Warranty of Services.</u> The Consultant warrants 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 the relevant Task Order is executed. The warranty expressed shall be in addition to any other warranties expressed in this Master Agreement, or expressed or implied by law, which are hereby reserved unto the City.

B. <u>Warranty of Deliverables.</u> The Deliverables will perform in accordance with all documentation, this Agreement, Consultant's marketing literature, and any other communications attached to or referenced in this Agreement. Consultant represents and warrants that the Deliverables and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of City as set forth in this Agreement and that the Deliverables submitted to the City for acceptance will conform to the Task Order and will be free of errors or defects in design, material and workmanship. Notwithstanding the above, any and all products incorporated into the Deliverables are subject to the warranties of their respective manufacturer(s) or publisher(s), and Vendor makes no warranties whatsoever with respect to said products.

C. <u>Assignment of Warranties.</u> Consultant will assign to the City any warranties, guaranties, indemnities, remedies, and other rights Consultant receives or has received from third-party vendors pertaining to the Deliverables. All manufacturers' and vendors' warranties applicable to the Deliverables will be in full force at the time of sale to the City, and all warranty terms will be as provided by the third-party vendor for its new products.

D. <u>Title and Transfer Warranty.</u> Title to all Deliverables transferred pursuant to this Agreement will be good and transfer rightful, and that the Deliverables and all rights thereto will be transferred and delivered to the City free and clear of all security interests and other liens, claims, charges, and encumbrances of any kind, other than applicable third-party vendors' license agreements with respect to software. Consultant has full power and authority to grant to the City all rights granted to the City pursuant to this Agreement, subject only to restrictions contained in any licenses. Consultant warrants that no part or component of any of the Deliverables will be subject to any proprietary right that will interfere with the City's intended use of the Deliverables. No Deliverable in the form delivered by Consultant to City, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by City, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

E <u>Software Compatibility Warranty.</u> All Deliverables will be compatible with and will operate on the City's System including its installed hardware and software environment.

F. <u>Documentation Warranty.</u> All documentation associated with the Deliverables will conform to the Deliverables and the documentation will be revised and delivered to the City contemporaneously with any modification or enhancement made to any Deliverables.

G. <u>Licensed Professionals.</u> Any of the Services required by law or by this Agreement to be performed by licensed professionals will be performed by professionals licensed by the State of Illinois to practice in the applicable professional discipline.

H <u>Media Free of Defects.</u> All CD-ROMs, DVD-ROMs, memory sticks, and all other storage media on which Deliverables are furnished by Consultant will be free from defects in materials and workmanship under normal use for ninety (90) days from the date of acceptance.

I. <u>Free of Computer Viruses.</u> Vendor will not, to its actual or constructive knowledge, install any Deliverables containing computer viruses, malware, spyware, or trojan horse code. Consultant will also maintain a master copy of the appropriate versions of all software Deliverables free of computer viruses, malware, spyware, or trojan horse code. If the City believes a computer virus, malware, spyware, or trojan horse code is present in any of the Deliverables, Consultant will provide the City, at no charge to the City, with a virus-free version of the affected Deliverable.

J. <u>Authorization</u>. Consultant will take all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Consultant will be duly authorized by Consultant and will have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Consultant.

K <u>Financially Solvent.</u> Consultant is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.

L <u>Company Background.</u> The information disclosed by the Consultant regarding its corporate structure and financial condition in its response to the City's RFP is true and correct. Consultant shall promptly notify City in writing of any material change in information set forth therein, including but not limited to change in ownership or control, and any such change shall be subject to City approval which shall not be unreasonably withheld.

M <u>Ethics.</u> No officer, agent or employee of the City is or will be employed by Consultant or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid thereunder, or engage in any other conduct in connection with this Agreement that is prohibited by the City's Code of Ethics (Chapter 2, Article III, Division 2 of the City of Des Plaines Municipal Code) or the Ethics Guidelines adopted by the Corporate Authorities of the City.

N. <u>No Default.</u> Consultant is not in arrears to the City upon any debt or contract and is not a defaulter as surety, contractor, or otherwise to any person.

0. <u>No Legal Actions Preventing Performance.</u> As of the Commencement Date of this Agreement, Consultant has no knowledge of any action, suit, proceeding, claim or investigation pending or to its knowledge threatened against Consultant in any court, or by or before any federal, state, municipal, or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely

determined, would materially affect Consultant's ability to perform its obligation under this Agreement.

P. <u>No Other Rights Limited.</u> Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the City under law and this Agreement.

Q. <u>Survival of Warranties.</u> All warranties will survive inspection, acceptance payment, expiration and termination of this Agreement.

R <u>Indemnification.</u> 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, 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.

S. Insurance. Contemporaneous with the Consultant's execution of this Master 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 B* to this Master Agreement as well as any additional insurance coverages required by a Task Order. For good cause shown, the City Manager 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 Manager 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 Master 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 5.A, Warranty of Services, of this Master Agreement.

T. <u>No Personal Liability.</u> 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 Master Agreement.

U. <u>Limitation of Liability.</u> Notwithstanding the above, in no event shall either party be liable to the other party under this Agreement for any incidental or consequential damages of any kind.

SECTION 9. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A <u>Relationship of the Parties.</u> The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Master 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. <u>Conflict of Interest.</u> The Consultant represents and certifies that, to the best of its knowledge, (1) no City employee or agent is interested in the business of the Consultant or this Master Agreement; (2) as of the date of this Master 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 Master 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 Master Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Master Agreement.

C. <u>No Collusion.</u> 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 Master Agreement, and that this Master 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 Master 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 Master Agreement shall, at the City's option, be null and void.

D. <u>Sexual Harassment Policy.</u> 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 <u>Patriot Act Compliance.</u> 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 Master 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. <u>Termination</u>. Notwithstanding any other provision hereof, either party may terminate this Master Agreement at any time upon 30 days' prior written notice to the other party, subject to any early termination fee set forth in a relevant Task Order. In the event that this Master Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred (including documented expenses reasonably incurred in reliance upon the completion of any relevant Task Order), if any, prior to termination, pursuant to the relevant Task Order.

G. <u>Compliance with Laws and Grants.</u> 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.

H <u>Default.</u> 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 Master Agreement and the relevant Task Order, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Master Agreement (*"Event of Default"*), and fails to cure any such Event of Default within fifteen business days, or another agreed upon time period agreed upon by the parties, 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. <u>Cure by Consultant.</u> 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 Master Agreement or the relevant Task Order.

2 <u>Termination of Agreement by City.</u> The City may terminate this Master Agreement without liability for further payment of disputed amounts due or to become due under the relevant Task Order or amounts withheld pursuant to subsection 9.H.3 of this Agreement.

3. <u>Withholding of Payment by City.</u> The City may withhold from any payment or may recover from the Consultant, all documented costs, including attorneys' fees and

administrative expenses, reasonably 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.

I. <u>City Board Authority.</u> Notwithstanding any provision of this Master Agreement, any negotiations or agreements with, or representations by the Consultant to vendors shall be subject to the approval of the City Board of Trustees. 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 Trustees.

J. <u>Mutual Cooperation</u>. 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 and with any other consultants engaged by the City.

K <u>News Releases.</u> The Consultant shall not issue any news releases or other public statements regarding the Services without prior approval from the City Manager.

L <u>Ownership.</u> 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 Master Agreement (*"Documents"*) shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Master Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

SECTION 10. GENERAL PROVISIONS.

A. <u>Amendment.</u> No amendment or modification to this Master Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

B. <u>Assignment.</u> This Master Agreement may not be assigned by the City or by the Consultant without the prior written consent of the other party.

C. <u>Binding Effect.</u> The terms of this Master Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.

D. <u>Notice</u>. Any notice or communication required or permitted to be given under this Master 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, or (iv) by electronic internet mail (*"e-maif"*). E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail 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 Master 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 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 Des Plaines 1420 Miner Street Des Plaines, Illinois 60018 Attention: Dorothy Wisniewski, City Manager E-mail: dwisniewski@desplaines.org

With a copy to:

Elrod Friedman LLP 325 N LaSalle Street, Suite 450 Chicago, Illinois 60654 Attention: Peter M Friedman, General Counsel E-mail: peter.friedman@elrodfriedman.com

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

Sentinel Technologies, Inc. 2550 Warrenville Road Downers Grove, IL 60515 Attn: David Meagher

With a copy to:

Sentinel Technologies, Inc. 2550 Warrenville Road Downers Grove, IL 60515 Attn: Legal Dept.

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

F. <u>City Not Subject to Taxes.</u> The City is exempt from state and local sales, use, and excise taxes. A letter of exemption will be provided to Consultant, if necessary. The City will not reimburse or assist Consultant in obtaining reimbursement for any state or local sales, use, or excise taxes paid by Consultant. Consultant shall be required to reimburse the City for any such taxes paid. Failure of Consultant to comply with the provisions of this Section shall entitle the City to withhold or recover from Consultant the costs thereof.

G. <u>Provisions Severable.</u> If any term, covenant, condition, or provision of this Master 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. H <u>Governing Laws.</u> This Master Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois. Any suit or action seeking to enforce or in any way arising from this Master Agreement or any Task Order must be brought in the Circuit Court of Cook County.

I <u>Patriot Act Compliance.</u> 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.

J. <u>Entire Agreement.</u> This Master 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 Services.

K <u>Waiver</u>. No waiver of any provision of this Master Agreement shall be deemed to or constitute a waiver of any other provision of this Master Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Master Agreement.

L <u>Exhibit.</u> Exhibits A, B, and C are attached hereto, and by this reference incorporated in and made a part of this Master Agreement. In the event of a conflict between the Exhibit and the text of this Master Agreement, the text of this Master Agreement shall control.

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

N <u>Counterpart Execution</u>. This Master 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.

[SIGNATURES FOLLOW ON NEXT PAGE]

City of Des Plaines	Sentinel Technologies, Inc.
Ву:	Ву:
Name: Dorothy Wisnieski	Name:
Title: <u>City Manager</u>	Title:

ATTACHMENT A

TASK ORDER

h accordance with Section 1.2 of the Master Services Agreement dated _____, 20___ between the City of Des Plaines (the "City") and Sentinel Technologies, Inc. (the "Consultanf"), the Parties agree to the following Task Number_:

1. Contracted Services:

2. **Project Schedule** (attach schedule if appropriate):

3. **Project Completion Date:**

All Contracted Services must be completed on or before: _____ ,20_.

4. **Project Specific Pricing** (if applicable):

5. Additional Changes to the Master Contract (if applicable):

ALL OTHER TERMS AND CONDITIONS OF THE MASTER CONTRACT REMAIN UNCHANGED.

[SIGNATURE PAGE FOLLOWS]

Exhibit A

CONSULTANT

Signature Director of Public Works And Engineering

Signature

Name (Printed or Typed)

_____,20___

_____,20___

If greater than, \$2,500, the City Manager's signature is required.

Signature City Manager

_____,20___

If compensation greater than \$25,000, then the City Council must approve the Services Change Order n advance and the City Manager or Mayor's signature is required.

Signature City Manager

_____,20___

CITY

-2-

ATTACHMENT B

INSURANCE

1.1 <u>Insurance.</u> The Consultant must procure and maintain, for the duration of this Master Contract, insurance as provided in this Attachment B.

1.2 <u>Scope of Coverage.</u>

(a) <u>Commercial General Liability.</u> Insurance Services Office Commercial General Liability occurrence form CG 0001, on a form at least as broad as the attached sample endorsement including ISO Additional Insured Endorsement CG 2010 (Exhibit A), CG 2026(Exhibit B).

(b) <u>Automobile Liability.</u> Insurance Service Office Business Auto Liability coverage form number CA 0001, Symbol 01 "Any Auto."

(c) <u>Professional Liability.</u> Indemnification and defense for injury or damage arising out of negligent acts, errors, or omissions in providing professional services.

(d) <u>Workers' Compensation and Employers' Liability.</u> Workers' Compensation as required by the Workers' Compensation Act of the State of Illinois and Employers' Liability insurance.

1.3 Minimum Limits of Coverage.

(a) <u>Commercial General Liability.</u> \$1,000,000 combined single limit per occurrence for bodily injury and for property damage and \$1,000,000 per occurrence for personal injury. The general aggregate must be twice the required occurrence limit. Minimum General Aggregate must be no less than \$2,000,000 or a project-contract specific aggregate of \$1,000,000.

(b) <u>Business Automobile Liability.</u> \$1,000,000 combined single limit per accident for bodily injury and property damage.

(c) <u>Workers' Compensation and Employers' Liability.</u> Workers' Compensation Coverage with statutory limits and Employers' Liability limits of \$500,000 per accident.

(d) <u>Professional Liability.</u> \$1,000,000 each claim with respect to negligent acts, errors, and omissions in connection with all professional services to be provided under this Master Contract and any Task Order, with a deductible not-to-exceed \$150,000 without prior written approval.

1.4 <u>Deductibles and Self-Insured Retentions.</u> Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer must reduce or eliminate such deductibles or self-insured retentions with respect to the City and its officials, employees, agents, and representatives or the Consultant must procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses. This provision does not apply to Paragraph 5.3(d) above.

1.5 <u>Additional Requirements.</u> The insurance policies must contain, or be endorsed to contain, the following provisions:

(a) <u>Commercial General Liability and Automobile Liability Coverage</u>. The City and its officials, employees, agents, and representatives must be covered as additional insured as respects: liability arising out of the Consultant's work, including without limitation activities performed by or on behalf of the Consultant and automobiles owned, leased, hired, or borrowed by the Consultant. Coverage must contain no special limitations on the scope of protection afforded to the City or its officials, employees, agents, and representatives.

(b) <u>Primary Coverage</u>. The insurance coverage must be primary with respect to the City and its officials, employees, agents, and representatives. Any insurance or self-insurance maintained by the City and its officials, employees, agents, and representatives will be excess of the Consultant's insurance and will not contribute with it.

(c) <u>Reporting Failures.</u> Any failure to comply with reporting provisions of any policy must not affect coverage provided to the City and its officials, employees, agents, and representatives.

(d) <u>Severability of Interests/Cross Liability.</u> The insurance must contain a Severability of Interests/Cross Liability clause or language stating that the insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's ability.

(e) <u>Umbrella Policies.</u> If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form," then the Consultant must name the City and its officials, employees, agents, and representatives as additional insureds under the umbrella policy.

(f) <u>Occurrence Form.</u> All general liability coverage must be provided on an occurrence policy form. Claims-made general liability policies are not acceptable.

(g) <u>Workers' Compensation and Employers' Liability Coverage.</u> The insurer must agree to waive all rights of subrogation against the City and its officials, employees, agents, and representatives for losses arising from work performed by the Consultant.

(h) <u>Professional Liability.</u> If the policy is written on a claims-made form, the retroactive date must be equal to or preceding the effective date of this Master Contract. If the policy is cancelled, non-renewed, or switched to an occurrence form, then the Consultant must purchase supplemental extending reporting period coverage for a period of not less than three years.

(i) <u>All Coverage</u>. Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice to the City by certified mail, return receipt requested.

G) <u>Acceptability of Insurers.</u> Unless specifically approved in writing in advance by the City, all insurance must be placed with insurers with a Best's rating of no less than A-, VII. All insurers must be licensed to do business in the State of Illinois.

1.6 <u>Verification of Coverage</u>. The Consultant must furnish the City with certificates of insurance naming the City and its officials, employees, agents, and representatives as additional insureds and with original endorsements affecting coverage required by this Attachment B. The certificates and endorsements for each insurance policy must be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the City and in any event must be received and approved by the City before any work commences. Other additional-insured endorsements may be utilized, if they provide a scope of coverage at least as broad as the coverage stated on the ISO Additional Insured Endorsements CG 201 Oor CG 2026. The City reserves the right to request a full certified copy of each insurance policy and endorsement.

1.7 <u>Sub-Consultants and Suppliers.</u> The Consultant must include all sub-consultants as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors are subject to all of the requirements stated in this Attachment B, except its professional liability policy.

ATTACHMENT B

TASK CHANGE ORDER FOR TASK NUMBER

In accordance with Section 4.1 of the Master Services Agreement dated _____, 20__ between the City of Des Plaines (the *"City"*) and Sentinel Technologies, Inc. (the *"Consu/tanf"*), the Parties agree to the following Task Change Order for Task Number_:

1. Change in Contracted Services:

2. Change in Project Schedule (attach schedule if appropriate):

3. Change in Project Completion Date:

All Contracted Services must be completed on or before _____ , 20____

4. Change in Compensation:

5. Change in Project Specific Pricing (if applicable).

ALL OTHER TERMS AND CONDITIONS OF THE MASTER CONTRACT REMAIN UNCHANGED.

[SIGNATURE PAGE FOLLOWS]

CITY	CONSULTANT
Signature Director of Public Works And Engineering	Signature Edward Truesdale Name (printed or typed)
Date,20	<u>Ma;y23"-2024</u> , 20_•Y_n_''' Date
If compensation increase greater than \$2,5	00, then the City Manager's signature is required.
Signature City Manager	
,20 Date	
If compensation greater than \$25,000, then Order in advance and the City Manager or	the City Council must approve the Services Change Mayor's signature is required.
Signature City Manager	
Date,20	

ATTACHMENT A

TASK ORDER 1

In accordance with Section 1.2 of the Master Contract dated June 17, 2024 between the City of Des Plaines (the "*City*") and Sentinel Technologies, Inc. (the "*Consultant*"), the Parties agree to the following Task Number 1:

1. Contracted Services: To include the following summary, defined items to provided separately.

Services included are detailed in the attached Quote #005013 Version 5

2. **Project Schedule** (attach schedule if appropriate): The consultant will provide services scheduled in advance with a 30-day calendar to be presented to the City monthly.

3. Project Completion Date:

All Contracted Services for this task order to be completed on or before: August 29, 2025. Continuation of these services shall be subject to City Council appropriations and approval.

4. **Project Specific Pricing** (if applicable): Pricing is provided in the attached quote at a rate of \$5,017.02 per month and one time charge of \$7,777.50. The total for this 12 month period shall not exceed \$67,981.74. Services beyond the term of this task order shall be subject to City Council appropriations and approval.

5. Additional Changes to the Master Contract (if applicable): The consultant will be provided access to all appropriate facilities, data, files of both electronic and hard copy as necessary to conduct and provide the necessary services requested. The City and Consultant will collaborate to identify gaps or areas of improvement to reduce vulnerabilities, exposures and to reduce losses.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

[SIGNATURE PAGE FOLLOWS]

City of Des Plaines

Professional Services Master Contract Professional Technology Services

CITY

Signature

CONSULTANT Gaund James Signature

Ed Truesdale

Date

And Engineering

Director of Public Works

June 10, 2024 Date

If greater than, \$[2,500], the City Manager's signature is required.

, 20

Signature City Manager

_____, 20_____

If compensation greater than \$[25,000], then the City Council must approve the Services Change Order in advance and the City Manager or Mayor's signature is required.

Signature City Manager

_____, 20_____

Date

desplaines.org



PUBLIC WORKS AND ENGINEERING DEPARTMENT 1111 Joseph J. Schwab Road Des Plaines, IL 60016 P: 847.391.5464

MEMORANDUM

Date: May 22, 2024

To:	Dorothy Wisniewski, City Manager	
-----	----------------------------------	--

From: Becka Shipp, P.E., Assistant Director of Engineering

Cc: Timothy P. Oakley, P.E., CFM, Director of Public Works and Engineering 70

Subject: DCEO Grant Agreement 24-203427 – Algonquin Rd Sidewalk

Issue: The City of Des Plaines has received a \$150,000 grant from the Illinois Department of Commerce and Economic Opportunity (DCEO) to construct new sidewalk on Algonquin Road where none exists near 624-658 Algonquin Road, and repair deficient sidewalk on Algonquin Road between Elmhurst Rd and Mt Prospect Rd.

Analysis: The corridor on Algonquin Road has a significant gap in the sidewalk network near 624-658 Algonquin Road. The corridor also has several locations of deteriorated sidewalk or walk that is not ADA compliant. This project constructs new sidewalk to connect residential, commercial, and recreational areas together via a continuous, safe, and walkable route. The project also repairs hazardous conditions such as tripping hazards, and repairs walk in compliance with ADA standards.

This work is included in the 2024 Concrete Program 24-00000-01-GM and was awarded to Martam Construction at the May 20, 2024 council meeting. The source of funding for the Algonquin Road Sidewalk is this grant (\$150,000).

Recommendation: We recommend approval of the intergovernmental grant agreement 24-203427 with the Illinois Department of Commerce and Economic Opportunity (DCEO).

Attachments:

Resolution R-115-24 Exhibit A – Uniform Grant Budget Exhibit B – Intergovernmental Grant Agreement

CITY OF DES PLAINES

RESOLUTION R - 115 - 24

A RESOLUTION AUTHORIZING THE EXECUTION OF A GRANT BUDGET AND AGREEMENT WITH THE STATE OF ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY.

WHEREAS, Article VII, Section 10, of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations and corporations, in any manner not prohibited by law or ordinance; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, et seq., authorizes and encourages intergovernmental cooperation; and

WHEREAS, the City has been awarded a grant from the State of Illinois Department of Commerce and Economic Opportunity ("DCEO") in the amount of \$150,000.00 ("Grant") for construction of new sidewalk and repairs to deficient sidewalk on Algonquin Road between Elmhurst Road and Mount Prospect Road (collectively, the "Work"), which Work is eligible for the Grant; and

WHEREAS, in order to receive the Grant, the City must execute a Notice of Grant Award and Uniform Grant Budget ("Grant Budget") and an intergovernmental grant agreement with the DCEO ("Agreement"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve and authorize the execution of the Grant Budget and Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows;

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as the findings of the City Council.

SECTION 2: APPROVAL OF GRANT BUDGET. The City Council hereby approves the Grant Budget substantially in the form attached as **Exhibit A**, and in a final form approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE GRANT BUDGET. The City Council hereby authorizes the Mayor and the Director of Finance, if necessary and applicable, to execute and seal, on behalf of the City, the final Grant Budget.

SECTION 4: APPROVAL OF AGREEMENT. The City Council hereby approves the Agreement substantially in the form attached as **Exhibit B**, and in a final form approved by the General Counsel.

SECTION 5: <u>AUTHORIZATION TO EXECUTE AGREEMENT</u>. The City Council hereby authorizes the Mayor and the Assistant Director of Public Works and Engineering, if necessary and applicable, to execute and seal, on behalf of the City, the final Agreement.

SECTION 6: EFFECTIVE DATE. This Resolution will be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of ______, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

UNIF	UNIFORM GRANT BUDGET TEMPLATE	T TEMPLATE			
Agency: Illinois Department of Commerce and Economic Opportunity	nic Opportunity			State FY: 2024	
Grantee: City of Des Plaines			DUNS Number:	74399668	Π
NOFO Number:	CSFA Number:	5	Grant Number:	24-203427	\square
CSFA Description:					
Section A: State of Illinois Funds	<u>Summary</u>	Detail			
Revenues					
State of Illinois Grant Amount Requested Budget Expenditure Categories	\$150,000.00				
1. Personnel (200.430)					
2. Fringe Benefits (200.431)					
3. Travel (200.474)					
4. Equipment (200.439)					
5. Supplies (200.94)					
6. Contractual/Subawards (200.318 and .92)					
7. Consultant (200.459)					
8. Construction	\$150,000.00				
1205 DESIGN/ENGINEERING		\$2,500.00			
1219 PAVING/CONCRETE/MASONRY		\$121,600.00			
1225 EXCAVATION/SITE PREP/DEMO		\$25,900.00			
9. Occupancy (200.465)					
10. Research and Development (200.87)					
11. Telecommunications					
12. Training and Education (200.472)					
13. Direct Administrative Costs (200.413)					
14. Miscellaneous Costs					
15. Grant Exclusive Line Item(s)					
16. Total Direct Costs (add lines 1-15)	\$150,000.00	\$150,000.00			
17. Total Indirect Costs (200.414)					
Rate: 3%					
Base:					
18. Total Costs State Grant Funds (Lines 16 and 17)	\$150,000.00	\$150,000.00			

State of Illinois

Exhibit A

Grantee: City of Des Plaines

0

NOFO Number:

. .

		Gr	Grant Number: 24-203427
By signing this report, I certify false, fictitious or fraudulent award(s).	By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and that any false, fictitious or fraudulent information or the omission of any material fact could result in the immediate termination of my grant award(s).	that the report is true, complet ial fact could result in the imme	e and accurate and that any ediate termination of my grant
Institution/Organization:	City of Des Plaines	Institution/Organization:	City of Des Plaines
Signature:		Signature:	
Printed Name:	Dorothy Wisniewski	Printed Name:	Andrew Goczkowski
Title:	City Manager	Title:	Mayor
Phone:	(847) 391-5317	Phone:	(847) 391-5301
Date:		Date:	
Correst profession of the Correst	Noto: The State Australian Annual maintee states of the Annual states and simon manual states and states and sho	· curter la contecta a la cotaca	The recursed circular much have the

Note: The State Awarding Agency may change required signers based on the grantee's organizational structure. The required signers must have the authority to enter into contractual agreements on the behalf of the organization.

Grantee: City of Des Plaines

0

NOFO Number:



GRANT AGREEMENT BETWEEN THE STATE OF ILLINOIS, DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY AND City of Des Plaines

The parties to this Grant Agreement (Agreement) are the State of Illinois (State), acting through the undersigned agency (Grantor) and City of Des Plaines (Grantee) (collectively, the "Parties" and individually, a "Party"). The Agreement, consisting of the signature page, the parts listed below, and any additional exhibits or attachments referenced in this Agreement, constitute the entire agreement between the Parties. No promises, terms, or conditions not recited, incorporated or referenced herein, including prior agreements or oral discussions, are binding upon either Grantee or Grantor.

PART ONE - The Uniform Terms

Article I	Definitions
Article II	Award Information
Article III	Grantee Certifications and Representations
Article IV	Payment Requirements
Article V	Scope of Award Activities/Purpose of Award
Article VI	Budget
Article VII	Allowable Costs
Article VIII	Lobbying
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Article XIV	Subcontracts/Subawards
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PART TWO – Grantor-Specific Terms

PART THREE – Project-Specific Terms

The Parties or their duly authorized representatives hereby execute this Agreement.

ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

CITY OF DES PLAINES

Ву:		Ву:	
Signature of Kristin A. Richards, Direc	tor	Signature of Auth	norized Representative
Date:		Date:	
D		Printed Name:	Andrew Goczkowski
By:			
Signature of Designee		Printed Title:	Mayor
Date:		Email:	agoczkowski@desplaines.org
Printed Name:			
Printed Title:			
	Designee		
Der		Deve	
By: Signature of Second Grantor Approve			ond Grantee Approver, if applicable
		Signature of Sec	ond Grantee Approver, if applicable
Date:		Date:	
Printed Name:		Printed Name:	
Printed Title:		Printed Title:	
Second G	rantor Approver		Second Grantee Approver
			(optional at Grantee's discretion)
By:			
Signature of Third Grantor Approver,	if applicable		
Date:			
Printed Name:			
Printed Title:			
Third G	Grantor Approver		

PART ONE – THE UNIFORM TERMS

ARTICLE I DEFINITIONS

1.1. <u>Definitions</u>. Capitalized words and phrases used in this Agreement have the meanings stated in 2 CFR 200.1 unless otherwise stated below.

"Allowable Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Award" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Budget" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Catalog of State Financial Assistance" or "CSFA" has the same meaning as in 44 III. Admin. Code 7000.30.

"Close-out Report" means a report from the Grantee allowing Grantor to determine whether all applicable administrative actions and required work have been completed, and therefore closeout actions can commence.

"Conflict of Interest" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Cooperative Research and Development Agreement" has the same meaning as in 15 USC 3710a.

"Direct Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Financial Assistance" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"GATU" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Grant Agreement" has the same meaning as in 44 III. Admin. Code 7000.30.

"Grant Funds" means the Financial Assistance made available to Grantee through this Agreement.

"Grantee Portal" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Indirect Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Indirect Cost Rate" means a device for determining in a reasonable manner the proportion of Indirect Costs each Program should bear. It is a ratio (expressed as a percentage) of the Indirect Costs to a Direct Cost base. If reimbursement of Indirect Costs is allowable under an Award, Grantor will not reimburse those Indirect Costs unless Grantee has established an Indirect Cost Rate covering the applicable activities and period of time, unless Indirect Costs are reimbursed at a fixed rate.

"Indirect Cost Rate Proposal" has the same meaning as in 44 III. Admin. Code 7000.30.

"Obligations" has the same meaning as in 44 III. Admin. Code 7000.30.

"Period of Performance" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Prior Approval" has the same meaning as in 44 III. Admin. Code 7000.30.

"Profit" means an entity's total revenue less its operating expenses, interest paid, depreciation, and taxes. "Profit" is synonymous with the term "net revenue."

"Program" means the services to be provided pursuant to this Agreement. "Program" is used interchangeably with "Project."

"Program Costs" means all Allowable Costs incurred by Grantee and the value of the contributions made by third parties in accomplishing the objectives of the Award during the Term of this Agreement.

"Related Parties" has the meaning set forth in Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 850-10-20.

"SAM" means the federal System for Award Management (SAM), the federal repository into which an entity must provide information required for the conduct of business as a recipient.

"State Grantee Compliance Enforcement System" means the statewide framework for State agencies to manage occurrences of non-compliance with Award requirements.

"State-issued Award" means the assistance that a grantee receives directly from a State agency. The funding source of the State-issued Award can be federal pass-through, State or a combination thereof. "State-issued Award" does not include the following:

- contracts issued pursuant to the Illinois Procurement Code that a State agency uses to buy goods or services from a contractor or a contract to operate State government-owned, contractor-operated facilities;
- agreements that meet the definition of "contract" under 2 CFR 200.1 and 2 CFR 200.331, which a State
 agency uses to procure goods or services but are exempt from the Illinois Procurement Code due to an
 exemption listed under 30 ILCS 500/1-10, or pursuant to a disaster proclamation, executive order, or any
 other exemption permitted by law;
- amounts received for services rendered to an individual;
- Cooperative Research and Development Agreements;
- an agreement that provides only direct cash assistance to an individual;
- a subsidy;
- a loan;
- a loan guarantee; or
- insurance.

"Illinois Stop Payment List" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Unallowable Cost" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Unique Entity Identifier" or "UEI" has the same meaning as in 44 III. Admin. Code 7000.30.

ARTICLE II AWARD INFORMATION

2.1. <u>Term</u>. This Agreement is effective on **05/01/2024** and expires on **04/30/2026** (the Term), unless terminated pursuant to this Agreement.

2.2. <u>Amount of Agreement</u>. Grant Funds must not exceed **\$150,000.00**, of which **\$0.00** are federal funds. Grantee accepts Grantor's payment as specified in this ARTICLE.

2.3. <u>Payment</u>. Payment will be made as follows (see additional payment requirements in ARTICLE IV; additional payment provisions specific to this Award may be included in <u>PART TWO</u> or <u>PART THREE</u>):

The Award amount listed in Paragraph 2.2 is not a guarantee of payment, and Grantee's receipt of Grant Funds is contingent upon all terms and conditions of this Agreement.

Reimbursement

Payments to the Grantee are subject to the Grantee's submission and certification of eligible costs and any documentation as required by the Grantor. Payment shall be initiated upon the Grantor's approval of eligible costs and cash amount requested for reimbursement of those costs.

2.4. <u>Award Identification Numbers</u>. If applicable, the Federal Award Identification Number (FAIN) is N/A, the federal awarding agency is N/A, and the Federal Award date is N/A. If applicable, the Assistance Listing Program Title is N/A and Assistance Listing Number is N/A. The Catalog of State Financial Assistance (CSFA) Number is 420-00-1758 and the CSFA Name is Site Improvements. If applicable, the State Award Identification Number (SAIN) is 1758-50531.

ARTICLE III GRANTEE CERTIFICATIONS AND REPRESENTATIONS

3.1. <u>Registration Certification</u>. Grantee certifies that: (i) it is registered with SAM and **DAS9KV9SMXV3** is Grantee's correct UEI; (ii) it is in good standing with the Illinois Secretary of State, if applicable; and (iii) Grantee has successfully completed the annual registration and prequalification through the Grantee Portal.

Grantee must remain current with these registrations and requirements. If Grantee's status with regard to any of these requirements changes, or the certifications made in and information provided in the uniform grant application changes, Grantee must notify Grantor in accordance with ARTICLE XV.

3.2. <u>Tax Identification Certification</u>. Grantee certifies that: **366005849** is Grantee's correct federal employer identification number (FEIN) or Social Security Number. Grantee further certifies, if applicable: (a) that Grantee is not subject to backup withholding because (i) Grantee is exempt from backup withholding, or (ii) Grantee has not been notified by the Internal Revenue Service (IRS) that Grantee is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Grantee that Grantee is no longer subject to backup withholding; and (b) Grantee is a U.S. citizen or other U.S. person. Grantee is doing business as a (check one):

	Individual	Pharmacy-Non Corporate
	Sole Proprietorship	Pharmacy/Funeral Home/Cemetery Corp.
	Partnership	Tax Exempt
	Corporation (includes Not For Profit)	Limited Liability Company (select applicable tax
	Medical Corporation	classification)
Х	Governmental Unit	P = partnership
	Estate or Trust	C = corporation

If Grantee has not received a payment from the State of Illinois in the last two years, Grantee must submit a W-9 tax form with this Agreement.

3.3. <u>Compliance with Uniform Grant Rules</u>. Grantee certifies that it must adhere to the applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which are published in Title 2, Part 200 of the Code of Federal Regulations (2 CFR Part 200) and are incorporated herein by reference. 44 III. Admin. Code 7000.40(c)(1)(A). The requirements of 2 CFR Part 200 apply to the Grant Funds

awarded through this Agreement, regardless of whether the original source of the funds is State or federal, unless an exception is noted in federal or State statutes or regulations. 30 ILCS 708/5(b).

3.4. <u>Representations and Use of Funds</u>. Grantee certifies under oath that (1) all representations made in this Agreement are true and correct and (2) all Grant Funds awarded pursuant to this Agreement must be used only for the purpose(s) described herein. Grantee acknowledges that the Award is made solely upon this certification and that any false statements, misrepresentations, or material omissions will be the basis for immediate termination of this Agreement and repayment of all Grant Funds.

3.5. <u>Specific Certifications</u>. Grantee is responsible for compliance with the enumerated certifications in this Paragraph to the extent that the certifications apply to Grantee.

(a) **Bribery.** Grantee certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, nor made an admission of guilt of such conduct which is a matter of record.

(b) **Bid Rigging.** Grantee certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Paragraph 33E-3 or 33E-4 of the Criminal Code of 2012 (720 ILCS 5/33E-3 or 720 ILCS 5/33E-4, respectively).

(c) **Debt to State.** Grantee certifies that neither it, nor its affiliate(s), is/are barred from receiving an Award because Grantee, or its affiliate(s), is/are delinquent in the payment of any debt to the State, unless Grantee, or its affiliate(s), has/have entered into a deferred payment plan to pay off the debt.

(d) **International Boycott.** Grantee certifies that neither it nor any substantially owned affiliated company is participating or will participate in an international boycott in violation of the provision of the Anti-Boycott Act of 2018, Part II of the Export Control Reform Act of 2018 (50 USC 4841 through 4843), and the anti-boycott provisions set forth in Part 760 of the federal Export Administration Regulations (15 CFR Parts 730 through 774).

(e) **Discriminatory Club Dues or Fees.** Grantee certifies that it is not prohibited from receiving an Award because it pays dues or fees on behalf of its employees or agents, or subsidizes or otherwise reimburses employees or agents for payment of their dues or fees to any club which unlawfully discriminates (775 ILCS 25/2).

(f) **Pro-Children Act.** Grantee certifies that it is in compliance with the Pro-Children Act of 2001 in that it prohibits smoking in any portion of its facility used for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18) (except such portions of the facilities which are used for inpatient substance abuse treatment) (20 USC 7181-7184).

(g) **Drug-Free Workplace.** If Grantee is not an individual, Grantee certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act. 30 ILCS 580/3. If Grantee is an individual and this Agreement is valued at more than \$5,000, Grantee certifies it will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the Agreement. 30 ILCS 580/4. Grantee further certifies that if it is a recipient of federal pass-through funds, it is in compliance with the government-wide requirements for a drug-free workplace as set forth in 41 USC 8103.

(h) **Motor Voter Law.** Grantee certifies that it is in full compliance with the terms and provisions of the National Voter Registration Act of 1993 (52 USC 20501 et seq.).

(i) **Clean Air Act and Clean Water Act.** Grantee certifies that it is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.).

(j) **Debarment.** Grantee certifies that it is not debarred, suspended, proposed for debarment or permanent inclusion on the Illinois Stop Payment List, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency (2 CFR 200.205(a)), or by the State (30 ILCS 708/25(6)(G)).

(k) **Non-procurement Debarment and Suspension.** Grantee certifies that it is in compliance with Subpart C of 2 CFR Part 180 as supplemented by 2 CFR Part 376, Subpart C.

(I) **Health Insurance Portability and Accountability Act.** Grantee certifies that it is in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law No. 104-191, 45 CFR Parts 160, 162 and 164, and the Social Security Act, 42 USC 1320d-2 through 1320d-7), in that it may not use or disclose protected health information other than as permitted or required by law and agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Grantee must maintain, for a minimum of six (6) years, all protected health information.

(m) Criminal Convictions. Grantee certifies that:

(i) Neither it nor a managerial agent of Grantee (for non-governmental grantees only, this includes any officer, director or partner of Grantee) has been convicted of a felony under the Sarbanes-Oxley Act of 2002, nor a Class 3 or Class 2 felony under Illinois Securities Law of 1953, or that at least five (5) years have passed since the date of the conviction; and

(ii) It must disclose to Grantor all violations of criminal law involving fraud, bribery or gratuity violations potentially affecting this Award. Failure to disclose may result in remedial actions as stated in the Grant Accountability and Transparency Act. 30 ILCS 708/40. Additionally, if Grantee receives over \$10 million in total federal Financial Assistance, during the period of this Award, Grantee must maintain the currency of information reported to SAM regarding civil, criminal or administrative proceedings as required by 2 CFR 200.113 and Appendix XII of 2 CFR Part 200, and 30 ILCS 708/40.

(n) **Federal Funding Accountability and Transparency Act of 2006 (FFATA)**. Grantee certifies that it is in compliance with the terms and requirements of 31 USC 6101 with respect to Federal Awards greater than or equal to \$30,000. A FFATA subaward report must be filed by the end of the month following the month in which the award was made.

(o) **Illinois Works Review Panel.** For Awards made for public works projects, as defined in the Illinois Works Jobs Program Act, Grantee certifies that it and any contractor(s) or subcontractor(s) that performs work using funds from this Award, must, upon reasonable notice, appear before and respond to requests for information from the Illinois Works Review Panel. 30 ILCS 559/20-25(d).

(p) Anti-Discrimination. Grantee certifies that its employees and subcontractors under subcontract made pursuant to this Agreement, must comply with all applicable provisions of State and federal laws and regulations pertaining to nondiscrimination, sexual harassment and equal employment opportunity including, but not limited to: Illinois Human Rights Act (775 ILCS 5/1-101 et seq.), including, without limitation, 44 III. Admin. Code 750- Appendix A, which is incorporated herein; Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.); Civil Rights Act of 1964 (as amended) (42 USC 2000a - 2000h-6); Section 504 of the Rehabilitation Act of 1973 (29 USC 794); Americans with Disabilities Act of 1990 (as amended) (42 USC 12101 et seq.); and the Age Discrimination Act of 1975 (42 USC 6101 et seq.).

(q) Internal Revenue Code and Illinois Income Tax Act. Grantee certifies that it complies with all provisions of the federal Internal Revenue Code (26 USC 1), the Illinois Income Tax Act (35 ILCS 5), and all regulations and rules promulgated thereunder, including withholding provisions and timely deposits of employee taxes and unemployment insurance taxes.

ARTICLE IV PAYMENT REQUIREMENTS

4.1. <u>Availability of Appropriation; Sufficiency of Funds</u>. This Agreement is contingent upon and subject to the availability of sufficient funds. Grantor may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient funds for this Agreement have not been appropriated or otherwise made available to Grantor by the State or the federal funding source, (ii) the Governor or Grantor reserves funds, or (iii) the Governor or Grantor determines that funds will not or may not be available for payment. Grantor must provide notice, in writing, to Grantee of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Paragraph will be effective upon the date of the written notice unless otherwise indicated.

4.2. <u>Pre-Award Costs</u>. Pre-award costs are not permitted unless specifically authorized by Grantor in **Exhibit A**, **PART TWO** or **PART THREE** of this Agreement. If they are authorized, pre-award costs must be charged to the initial Budget Period of the Award, unless otherwise specified by Grantor. 2 CFR 200.458.

4.3. <u>Return of Grant Funds</u>. Grantee must liquidate all Obligations incurred under the Award within forty-five (45) days of the end of the Period of Performance, or in the case of capital improvement Awards, within forty-five (45) days of the end of the time period the Grant Funds are available for expenditure or obligation, unless Grantor permits a longer period in **PART TWO** OR **PART THREE**.

4.4. <u>Cash Management Improvement Act of 1990</u>. Unless notified otherwise in <u>PART TWO</u> or <u>PART</u> <u>THREE</u>, Grantee must manage federal funds received under this Agreement in accordance with the Cash Management Improvement Act of 1990 (31 USC 6501 et seq.) and any other applicable federal laws or regulations. 2 CFR 200.305; 44 III. Admin. Code 7000.120.

4.5. <u>Payments to Third Parties.</u> Grantor will have no liability to Grantee when Grantor acts in good faith to redirect all or a portion of any Grantee payment to a third party. Grantor will be deemed to have acted in good faith when it is in possession of information that indicates Grantee authorized Grantor to intercept or redirect payments to a third party or when so ordered by a court of competent jurisdiction.

4.6. <u>Modifications to Estimated Amount</u>. If the Agreement amount is established on an estimated basis, then it may be increased by mutual agreement at any time during the Term. Grantor may decrease the estimated amount of this Agreement at any time during the Term if (i) Grantor believes Grantee will not use the funds during the Term, (ii) Grantor believes Grantee has used Grant Funds in a manner that was not authorized by this Agreement, (iii) sufficient funds for this Agreement have not been appropriated or otherwise made available to Grantor by the State or the federal funding source, (iv) the Governor or Grantor reserves funds, or (v) the Governor or Grantor determines that funds will or may not be available for payment. Grantee will be notified, in writing, of any adjustment of the estimated amount of this Agreement. In the event of such reduction, services provided by Grantee under <u>Exhibit A</u> may be reduced accordingly. Grantor must pay Grantee for work satisfactorily performed prior to the date of the notice regarding adjustment. 2 CFR 200.308.

4.7. <u>Interest</u>.

(a) All interest earned on Grant Funds held by a Grantee will be treated in accordance with 2 CFR 200.305(b)(9), unless otherwise provided in <u>PART TWO</u> or <u>PART THREE</u>. Grantee must remit annually any amount due in accordance with 2 CFR 200.305(b)(9) or to Grantor, as applicable.

(b) Grant Funds must be placed in an insured account, whenever possible, that bears interest, unless exempted under 2 CFR 200.305(b)(8).

4.8. <u>Timely Billing Required</u>. Grantee must submit any payment request to Grantor within fifteen (15) days of the end of the quarter, unless another billing schedule is specified in ARTICLE II, <u>PART TWO</u>, or <u>PART</u> <u>THREE</u>. Failure to submit such payment request timely will render the amounts billed Unallowable Costs which Grantor cannot reimburse. In the event that Grantee is unable, for good cause, to submit its payment request timely, Grantee shall timely notify Grantor and may request an extension of time to submit the payment request. Grantor's approval of Grantee's request for an extension shall not be unreasonably withheld.

4.9. <u>Certification</u>. Pursuant to 2 CFR 200.415, each invoice and report submitted by Grantee (or subrecipient) must contain the following certification by an official authorized to legally bind Grantee (or subrecipient):

By signing this report [or payment request or both], I certify to the best of my knowledge and belief that the report [or payment request] is true, complete, and accurate; that the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the State or federal pass-through award; and that supporting documentation has been submitted as required by the grant agreement. I acknowledge that approval for any other expenditure described herein is considered conditional subject to further review and verification in accordance with the monitoring and records retention provisions of the grant agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812; 30 ILCS 708/120).

ARTICLE V SCOPE OF AWARD ACTIVITIES/PURPOSE OF AWARD

5.1. <u>Scope of Award Activities/Purpose of Award</u>. Grantee must perform as described in this Agreement, including as described in <u>Exhibit A</u> (Project Description), <u>Exhibit B</u> (Deliverables or Milestones), and <u>Exhibit D</u> (Performance Measures and Standards), as applicable. Grantee must further comply with all terms and conditions set forth in the Notice of State Award (44 III. Admin. Code 7000.360) which is incorporated herein by reference. All Grantor-specific provisions and programmatic reporting required under this Agreement are described in <u>PART TWO</u> (Grantor-Specific Terms). All Project-specific provisions and reporting required under this Agreement are described in <u>PART THREE</u> (Project-Specific Terms).

5.2. <u>Scope Revisions</u>. Grantee must obtain Prior Approval from Grantor whenever a scope revision is necessary for one or more of the reasons enumerated in 44 III. Admin. Code 7000.370(b)(2). All requests for scope revisions that require Grantor approval must be signed by Grantee's authorized representative and submitted to Grantor for approval. Expenditure of funds under a requested revision is prohibited and will not be reimbursed if expended before Grantor gives written approval. 2 CFR 200.308.

5.3. <u>Specific Conditions</u>. If applicable, specific conditions required after a risk assessment are included in **Exhibit E**. Grantee must adhere to the specific conditions listed therein. 44 III. Admin. Code 7000.340(e).

ARTICLE VI BUDGET

6.1. <u>Budget</u>. The Budget submitted by Grantee at application, or a revised Budget subsequently submitted and approved by Grantor, is considered final and is incorporated herein by reference.

6.2. <u>Budget Revisions</u>. Grantee must obtain Prior Approval, whether mandated or discretionary, from Grantor whenever a Budget revision, is necessary for one or more of the reasons enumerated in 44 III. Admin. Code 7000.370(b). All requests for Budget revisions that require Grantor approval must be signed by Grantee's authorized representative and submitted to Grantor for approval. Expenditure of funds under a requested revision is prohibited and will not be reimbursed if expended before Grantor gives written approval.

6.3. <u>Notification</u>. Within thirty (30) calendar days from the date of receipt of the request for Budget revisions, Grantor will review the request and notify Grantee whether the Budget revision has been approved, denied, or the date upon which a decision will be reached. 44 III. Admin. Code 7000.370(b)(7).

ARTICLE VII ALLOWABLE COSTS

7.1. <u>Allowability of Costs; Cost Allocation Methods</u>. The allowability of costs and cost allocation methods for work performed under this Agreement will be determined in accordance with 2 CFR Part 200 Subpart E and Appendices III, IV, V, and VII.

7.2. Indirect Cost Rate Submission.

(a) All grantees, except for Local Education Agencies (as defined in 34 CFR 77.1), must make an Indirect Cost Rate election in the Grantee Portal, even grantees that do not charge or expect to charge Indirect Costs. 44 III. Admin. Code 7000.420(e).

(i) Waived and de minimis Indirect Cost Rate elections will remain in effect until Grantee elects a different option.

(b) Grantee must submit an Indirect Cost Rate Proposal in accordance with federal and State regulations, in a format prescribed by Grantor. For grantees who have never negotiated an Indirect Cost Rate before, the Indirect Cost Rate Proposal must be submitted for approval no later than three months after the effective date of the Award. For grantees who have previously negotiated an Indirect Cost Rate, the Indirect Cost Rate Proposal must be submitted for approval within 180 days of Grantee's fiscal year end, as dictated in the applicable appendices, such as:

(i) Appendix VII to 2 CFR Part 200 governs Indirect Cost Rate Proposals for state and Local Governments and Indian Tribes,

(ii) Appendix III to 2 CFR Part 200 governs Indirect Cost Rate Proposals for public and private institutions of higher education,

(iii) Appendix IV to 2 CFR Part 200 governs Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, and

(iv) Appendix V to 2 CFR Part 200 governs state/Local Governmentwide Central Service Cost Allocation Plans.

(c) A grantee who has a current, applicable rate negotiated by a cognizant federal agency must provide to Grantor a copy of its Indirect Cost Rate acceptance letter from the federal government and a copy of all documentation regarding the allocation methodology for costs used to negotiate that rate, e.g., without limitation, the cost policy statement or disclosure narrative statement. Grantor will accept that Indirect Cost Rate, up to any statutory, rule-based or programmatic limit.

(d) A grantee who does not have a current negotiated rate, may elect to charge a de minimis rate of 10% of Modified Total Direct Cost which may be used indefinitely. No documentation is required to justify the 10% de minimis Indirect Cost Rate. 2 CFR 200.414(f).

7.3. <u>Transfer of Costs</u>. Cost transfers between Grants, whether as a means to compensate for cost overruns or for other reasons, are unallowable. 2 CFR 200.451.

7.4. <u>Commercial Organization Cost Principles</u>. The federal cost principles and procedures for cost analysis and the determination, negotiation and allowance of costs that apply to commercial organizations are set forth in 48 CFR Part 31.

7.5. <u>Financial Management Standards</u>. The financial management systems of Grantee must meet the following standards:

(a) Accounting System. Grantee organizations must have an accounting system that provides accurate, current, and complete disclosure of all financial transactions related to each state- and federally-funded Program. Accounting records must contain information pertaining to State and federal pass-through awards, authorizations, Obligations, unobligated balances, assets, outlays, and income. These records must be maintained on a current basis and balanced at least quarterly. Cash contributions to the Program from third parties must be accounted for in the general ledger with other Grant Funds. Third party in-kind (non-cash) contributions are not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger. To comply with 2 CFR 200.305(b)(7)(i) and 30 ILCS 708/97, Grantee must use reasonable efforts to ensure that funding streams are delineated within Grantee's accounting system. 2 CFR 200.302.

(b) **Source Documentation**. Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bills, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation must be clearly identified with the Award and general ledger accounts which are to be charged or credited.

(i) The documentation standards for salary charges to Grants are prescribed by 2 CFR 200.430, and in the cost principles applicable to the Grantee's organization.

(ii) If records do not meet the standards in 2 CFR 200.430, then Grantor may notify Grantee in **PART TWO**, **PART THREE** or **Exhibit E** of the requirement to submit personnel activity reports. 2 CFR 200.430(i)(8). Personnel activity reports must account on an after-the-fact basis for one hundred percent (100%) of the employee's actual time, separately indicating the time spent on the Award, other grants or projects, vacation or sick leave, and administrative time, if applicable. The reports must be signed by the employee, approved by the appropriate official, and coincide with a pay period. These time records must be used to record the distribution of salary costs to the appropriate accounts no less frequently than quarterly.

(iii) Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of Grantee.

(iv) If third party in-kind (non-cash) contributions are used for Award purposes, the valuation of these contributions must be supported with adequate documentation.

(c) **Internal Control**. Grantee must maintain effective control and accountability for all cash, real and personal property, and other assets. Grantee must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. Grantee must also have systems in place that provide reasonable assurance that the information is accurate, allowable, and compliant with the terms and conditions of this Agreement. 2 CFR 200.303.

(d) **Budget Control**. Grantee must maintain records of expenditures for each Award by the cost categories of the approved Budget (including Indirect Costs that are charged to the Award), and actual expenditures are to be compared with budgeted amounts at least quarterly.

(e) **Cash Management**. Requests for advance payment must be limited to Grantee's immediate cash needs. Grantee must have written procedures to minimize the time elapsing between the receipt and the disbursement of Grant Funds to avoid having excess funds on hand. 2 CFR 200.305.

7.6. <u>Profits</u>. It is not permitted for any person or entity to earn a Profit from an Award. See, e.g., 2 CFR 200.400(g); see also 30 ILCS 708/60(a)(7).

7.7. <u>Management of Program Income</u>. Grantee is encouraged to earn income to defray Program Costs where appropriate, subject to 2 CFR 200.307.

ARTICLE VIII LOBBYING

8.1. Improper Influence. Grantee certifies that it will not use and has not used Grant Funds to influence or attempt to influence an officer or employee of any government agency or a member or employee of the State or federal legislature in connection with the awarding of any agreement, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any agreement, grant, loan or cooperative agreement. Additionally, Grantee certifies that it has filed the required certification under the Byrd Anti-Lobbying Amendment (31 USC 1352), if applicable.

8.2. <u>Federal Form LLL</u>. If any federal funds, other than federally-appropriated funds, were paid or will be paid to any person for influencing or attempting to influence any of the above persons in connection with this Agreement, the undersigned must also complete and submit Federal Form LLL, Disclosure of Lobbying Activities Form, in accordance with its instructions.

8.3. <u>Lobbying Costs</u>. Grantee certifies that it is in compliance with the restrictions on lobbying set forth in 2 CFR 200.450. For any Indirect Costs associated with this Agreement, total lobbying costs must be separately identified in the Program Budget, and thereafter treated as other Unallowable Costs.

8.4. <u>Procurement Lobbying</u>. Grantee warrants and certifies that it and, to the best of its knowledge, its subrecipients have complied and will comply with Illinois Executive Order No. 1 (2007) (EO 1-2007). EO 1-2007 generally prohibits grantees and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.

8.5. <u>Subawards</u>. Grantee must include the language of this ARTICLE in the award documents for any subawards made pursuant to this Award at all tiers. All subrecipients are also subject to certification and disclosure. Pursuant to Appendix II(I) to 2 CFR Part 200, Grantee must forward all disclosures by contractors regarding this certification to Grantor.

8.6. <u>Certification</u>. This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction, pursuant to 31 USC 1352. Any person who fails to file the required certifications will be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

ARTICLE IX MAINTENANCE AND ACCESSIBILITY OF RECORDS; MONITORING

9.1. <u>Records Retention</u>. Grantee must maintain for three (3) years from the date of submission of the final expenditure report, adequate books, all financial records and, supporting documents, statistical records, and all other records pertinent to this Award, adequate to comply with 2 CFR 200.334, unless a different retention period is specified in 2 CFR 200.334, 44 III. Admin. Code 7000.430(a) and (b) or <u>PART TWO</u> or <u>PART THREE</u>. If any litigation, claim or audit is started before the expiration of the retention period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action taken.

9.2. <u>Accessibility of Records</u>. Grantee, in compliance with 2 CFR 200.337 and 44 III. Admin. Code 7000.430(f), must make books, records, related papers, supporting documentation and personnel relevant to this Agreement available to authorized Grantor representatives, the Illinois Auditor General, Illinois Attorney General, any Executive Inspector General, Grantor's Inspector General, federal authorities, any person identified in 2 CFR 200.337, and any other person as may be authorized by Grantor (including auditors), by the State of Illinois or by federal statute. Grantee must cooperate fully in any such audit or inquiry.

9.3. <u>Failure to Maintain Books and Records</u>. Failure to maintain books, records and supporting documentation, as described in this ARTICLE, establishes a presumption in favor of the State for the recovery of any Grant Funds paid by the State under this Agreement for which adequate books, records and supporting documentation are not available to support disbursement.

9.4. <u>Monitoring and Access to Information</u>. Grantee must monitor its activities to assure compliance with applicable state and federal requirements and to assure its performance expectations are being achieved. Grantor will monitor the activities of Grantee to assure compliance with all requirements and performance expectations of the Award. Grantee must timely submit all financial and performance reports, and must supply, upon Grantor's request, documents and information relevant to the Award. Grantor may make site visits as warranted by Program needs. 2 CFR 200.329; 200.332. Additional monitoring requirements may be in **PART TWO** or **PART THREE**.

ARTICLE X FINANCIAL REPORTING REQUIREMENTS

10.1. <u>Required Periodic Financial Reports</u>. Grantee must submit financial reports as requested and in the format required by Grantor no later than the dues date(s) specified in <u>PART TWO</u> or <u>PART THREE</u>. Grantee must submit quarterly reports with Grantor describing the expenditure(s) of the funds related thereto, unless more frequent reporting is required by the Grantee due to the funding source or pursuant to specific award conditions. 2 CFR 200.208. Any report required by 30 ILCS 708/125 may be detailed in <u>PART TWO</u> or <u>PART THREE</u>.

10.2. Financial Close-out Report.

(a) Grantee must submit a financial Close-out Report, in the format required by Grantor, by the due date specified in **PART TWO** or **PART THREE**, which must be no later than sixty (60) calendar days following the end of the Period of Performance for this Agreement or Agreement termination. The format of this financial Close-out Report must follow a format prescribed by Grantor. 2 CFR 200.344; 44 III. Admin. Code 7000.440(b).

(b) If an audit or review of Grantee occurs and results in adjustments after Grantee submits a Close-out Report, Grantee must submit a new financial Close-out Report based on audit adjustments, and immediately submit a refund to Grantor, if applicable. 2 CFR 200.345; 44 III. Admin. Code 7000.450.

10.3. Effect of Failure to Comply. Failure to comply with the reporting requirements in this Agreement may cause a delay or suspension of funding or require the return of improper payments or Unallowable Costs, and will be considered a material breach of this Agreement. Grantee's failure to comply with ARTICLE X, ARTICLE XI, or ARTICLE XVII will be considered prima facie evidence of a breach and may be admitted as such, without further proof, into evidence in an administrative proceeding before Grantor, or in any other legal proceeding. Grantee should refer to the State Grantee Compliance Enforcement System for policy and consequences for failure to comply. 44 III. Admin. Code 7000.80.

ARTICLE XI PERFORMANCE REPORTING REQUIREMENTS

11.1. <u>Required Periodic Performance Reports</u>. Grantee must submit performance reports as requested and in the format required by Grantor no later than the due date(s) specified in <u>PART TWO</u> or <u>PART THREE</u>. 44 III. Admin. Code 7000.410. Grantee must report to Grantor on the performance measures listed in <u>Exhibit D</u>, <u>PART</u> <u>TWO</u> or <u>PART THREE</u> at the intervals specified by Grantor, which must be no less frequent than annually and no more frequent than quarterly, unless otherwise specified in <u>PART TWO</u>, <u>PART THREE</u>, or <u>Exhibit E</u> pursuant to specific award conditions. For certain construction-related Awards, such reports may be exempted as identified in <u>PART TWO</u> or <u>PART THREE</u>. 2 CFR 200.329.

11.2. <u>Performance Close-out Report</u>. Grantee must submit a performance Close-out Report, in the format required by Grantor by the due date specified in <u>PART TWO</u> or <u>PART THREE</u>, which must be no later than 60 calendar days following the end of the Period of Performance or Agreement termination. 2 CFR 200.344; 44 III. Admin. Code 7000.440(b).

11.3. <u>Content of Performance Reports</u>. Pursuant to 2 CFR 200.329(b) and (c), all performance reports must relate the financial data and accomplishments to the performance goals and objectives of this Award and also include the following: a comparison of actual accomplishments to the objectives of the Award established for the period; where the accomplishments can be quantified, a computation of the cost and demonstration of cost effective practices (e.g., through unit cost data); performance trend data and analysis if required; and reasons why established goals were not met, if appropriate. Additional content and format guidelines for the performance reports will be determined by Grantor contingent on the Award's statutory, regulatory and administrative requirements, and are included in **PART TWO** or **PART THREE** of this Agreement.

ARTICLE XII AUDIT REQUIREMENTS

12.1. <u>Audits</u>. Grantee is subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507), Subpart F of 2 CFR Part 200, and the audit rules and policies set forth by the Governor's Office of Management and Budget. 30 ILCS 708/65(c); 44 Ill. Admin. Code 7000.90.

12.2. <u>Consolidated Year-End Financial Reports (CYEFR)</u>. All grantees must complete and submit a CYEFR through the Grantee Portal, except those exempted by federal or State statute or regulation, as set forth in **PART TWO** or **PART THREE**. The CYEFR is a required schedule in Grantee's audit report if Grantee is required to complete and submit an audit report as set forth herein.

(a) Grantee's CYEFR must cover the same period as the audited financial statements, if required, and must be submitted in accordance with the audit schedule at 44 III. Admin. Code 7000.90. If Grantee is not required to complete audited financial statements, the CYEFR must cover Grantee's fiscal year and must be submitted within 6 months of the Grantee's fiscal year-end.

(b) The CYEFR must include an in relation to opinion from the auditor of the financial statements included in the audit.

- (c) The CYEFR must follow a format prescribed by Grantor.
- 12.3. Entities That Are Not "For-Profit".
 - (a) This Paragraph applies to Grantees that are not "for-profit" entities.

(b) Single and Program-Specific Audits. If, during its fiscal year, Grantee expends \$750,000 or more in federal Awards (direct federal and federal pass-through awards combined), Grantee must have a single audit or program-specific audit conducted for that year as required by 2 CFR 200.501 and other applicable sections of Subpart F of 2 CFR Part 200. The audit report packet must be completed as described in 2 CFR 200.512 (single audit) or 2 CFR 200.507 (program-specific audit), 44 III. Admin. Code 7000.90(h)(1) and the current GATA audit manual and submitted to the Federal Audit Clearinghouse, as required by 2 CFR 200.512. The results of peer and external quality control reviews, management letters issued by the auditors and their respective corrective action plans if significant deficiencies or material weaknesses are identified, and the CYEFR(s) must be submitted to the Grantee Portal. The due date of all required submissions set forth in this Paragraph is the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) nine (9) months after the end of Grantee's audit period.

(c) Financial Statement Audit. If, during its fiscal year, Grantee expends less than \$750,000 in federal Awards, Grantee is subject to the following audit requirements:

(i) If, during its fiscal year, Grantee expends \$500,000 or more in State-issued Awards, Grantee must have a financial statement audit conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS). Grantee may be subject to additional requirements in **PART TWO**, **PART THREE** or **Exhibit E** based on Grantee's risk profile.

(ii) If, during its fiscal year, Grantee expends less than \$500,000 in State-issued Awards, but expends \$300,000 or more in State-issued Awards, Grantee must have a financial statement audit conducted in accordance with the Generally Accepted Auditing Standards (GAAS).

(iii) If Grantee is a Local Education Agency (as defined in 34 CFR 77.1), Grantee must have a financial statement audit conducted in accordance with GAGAS, as required by 23 III. Admin. Code 100.110, regardless of the dollar amount of expenditures of State-issued Awards.

(iv) If Grantee does not meet the requirements in subsections 12.3(b) and 12.3(c)(i iii) but is required to have a financial statement audit conducted based on other regulatory requirements, Grantee must submit those audits for review.

(v) Grantee must submit its financial statement audit report packet, as set forth in 44 III. Admin. Code 7000.90(h)(2) and the current GATA audit manual, to the Grantee Portal within the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) six (6) months after the end of Grantee's audit period.

12.4. <u>"For-Profit" Entities</u>.

(a) This Paragraph applies to Grantees that are "for-profit" entities.

(b) Program-Specific Audit. If, during its fiscal year, Grantee expends \$750,000 or more in federal pass-through funds from State-issued Awards, Grantee must have a program-specific audit conducted in accordance with 2 CFR 200.507. The auditor must audit federal pass-through programs with federal pass-through Awards expended that, in the aggregate, cover at least 50 percent (0.50) of total federal pass-through Awards expended. The audit report packet must be completed as described in 2 CFR 200.507 (program-specific audit), 44 III. Admin. Code 7000.90 and the current GATA audit manual, and

must be submitted to the Grantee Portal. The due date of all required submissions set forth in this Paragraph is the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) nine (9) months after the end of Grantee's audit period.

(c) Financial Statement Audit. If, during its fiscal year, Grantee expends less than \$750,000 in federal pass-through funds from State-issued Awards, Grantee must follow all of the audit requirements in Paragraphs 12.3(c)(i)-(v), above.

(d) Publicly-Traded Entities. If Grantee is a publicly-traded company, Grantee is not subject to the single audit or program-specific audit requirements, but must submit its annual audit conducted in accordance with its regulatory requirements.

12.5. <u>Performance of Audits</u>. For those organizations required to submit an independent audit report, the audit must be conducted by the Illinois Auditor General (as required for certain governmental entities only), or a Certified Public Accountant or Certified Public Accounting Firm licensed in the State of Illinois or in accordance with Section 5.2 of the Illinois Public Accounting Act (225 ILCS 450/5.2). For all audits required to be performed subject to GAGAS or Generally Accepted Auditing Standards, Grantee must request and maintain on file a copy of the auditor's most recent peer review report and acceptance letter. Grantee must follow procedures prescribed by Grantor for the preparation and submission of audit reports and any related documents.

12.6. <u>Delinquent Reports</u>. When audit reports or financial statements required under this ARTICLE are prepared by the Illinois Auditor General, if they are not available by the above-specified due date, they must be provided to Grantor within thirty (30) days of becoming available. Grantee should refer to the State Grantee Compliance Enforcement System for the policy and consequences for late reporting. 44 Ill. Admin. Code 7000.80.

ARTICLE XIII TERMINATION; SUSPENSION; NON-COMPLIANCE

13.1. <u>Termination</u>.

(a) Either Party may terminate this Agreement, in whole or in part, upon thirty (30) calendar days' prior written notice to the other Party.

(b) If terminated by the Grantee, Grantee must include the reasons for such termination, the effective date, and, in the case of a partial termination, the portion to be terminated. If Grantor determines in the case of a partial termination that the reduced or modified portion of the Award will not accomplish the purposes for which the Award was made, Grantor may terminate the Agreement in its entirety. 2 CFR 200.340(a)(4).

(c) This Agreement may be terminated, in whole or in part, by Grantor:

(i) Pursuant to a funding failure under Paragraph 4.1;

(ii) If Grantee fails to comply with the terms and conditions of this or any Award, application or proposal, including any applicable rules or regulations, or has made a false representation in connection with the receipt of this or any Award; or

(iii) If the Award no longer effectuates the Program goals or agency priorities as set forth in **Exhibit A**, **PART TWO** or **PART THREE**.

13.2. <u>Suspension</u>. Grantor may suspend this Agreement, in whole or in part, pursuant to a funding failure under Paragraph 4.1 or if the Grantee fails to comply with terms and conditions of this or any Award. If

suspension is due to Grantee's failure to comply, Grantor may withhold further payment and prohibit Grantee from incurring additional Obligations pending corrective action by Grantee or a decision to terminate this Agreement by Grantor. Grantor may allow necessary and proper costs that Grantee could not reasonably avoid during the period of suspension.

13.3. <u>Non-compliance</u>. If Grantee fails to comply with the U.S. Constitution, applicable statutes, regulations or the terms and conditions of this or any Award, Grantor may impose additional conditions on Grantee, as described in 2 CFR 200.208. If Grantor determines that non-compliance cannot be remedied by imposing additional conditions, Grantor may take one or more of the actions described in 2 CFR 200.339. The Parties must follow all Grantor policies and procedures regarding non-compliance, including, but not limited to, the procedures set forth in the State Grantee Compliance Enforcement System. 44 III. Admin. Code 7000.80 and 7000.260.

13.4. <u>Objection</u>. If Grantor suspends or terminates this Agreement, in whole or in part, for cause, or takes any other action in response to Grantee's non-compliance, Grantee may avail itself of any opportunities to object and challenge such suspension, termination or other action by Grantor in accordance with any applicable processes and procedures, including, but not limited to, the procedures set forth in the State Grantee Compliance Enforcement System. 2 CFR 200.342; 44 Ill. Admin. Code 7000.80 and 7000.260.

13.5. Effects of Suspension and Termination.

(a) Grantor may credit Grantee for allowable expenditures incurred in the performance of authorized services under this Agreement prior to the effective date of a suspension or termination.

(b) Except as set forth in subparagraph (c), below, Grantee must not incur any costs or Obligations that require the use of Grant Funds after the effective date of a suspension or termination, and must cancel as many outstanding Obligations as possible.

(c) Costs to Grantee resulting from Obligations incurred by Grantee during a suspension or after termination of the Agreement are not allowable unless Grantor expressly authorizes them in the notice of suspension or termination or subsequently. However, Grantor may allow costs during a suspension or after termination if:

(i) The costs result from Obligations properly incurred before the effective date of suspension or termination, are not in anticipation of the suspension or termination, and the costs would be allowable if the Agreement was not suspended or terminated prematurely. 2 CFR 200.343.

13.6. <u>Close-out of Terminated Agreements</u>. If this Agreement is terminated, in whole or in part, the Parties must comply with all close-out and post-termination requirements of this Agreement. 2 CFR 200.340(d).

ARTICLE XIV SUBCONTRACTS/SUBAWARDS

14.1. <u>Subcontracting/Subrecipients/Delegation</u>. Grantee must not subcontract nor issue a subaward for any portion of this Agreement nor delegate any duties hereunder without Prior Approval of Grantor. The requirement for Prior Approval is satisfied if the subcontractor or subrecipient has been identified in the uniform grant application, such as, without limitation, a Project description, and Grantor has approved. Grantee must notify any potential subrecipient that the subrecipient must obtain and provide to the Grantee a Unique Entity Identifier prior to receiving a subaward. 2 CFR 25.300.

14.2. <u>Application of Terms</u>. If Grantee enters into a subaward agreement with a subrecipient, Grantee must notify the subrecipient of the applicable laws and regulations and terms and conditions of this Award by attaching this Agreement to the subaward agreement. The terms of this Agreement apply to all subawards authorized in accordance with Paragraph 14.1. 2 CFR 200.101(b)(2).

14.3. <u>Liability as Guaranty</u>. Grantee will be liable as guarantor for any Grant Funds it obligates to a subrecipient or subcontractor pursuant to this ARTICLE in the event Grantor determines the funds were either misspent or are being improperly held and the subrecipient or subcontractor is insolvent or otherwise fails to return the funds. 2 CFR 200.345; 30 ILCS 705/6; 44 Ill. Admin. Code 7000.450(a).

ARTICLE XV NOTICE OF CHANGE

15.1. <u>Notice of Change</u>. Grantee must notify Grantor if there is a change in Grantee's legal status, FEIN, UEI, SAM registration status, Related Parties, senior management (for non-governmental grantees only) or address. If the change is anticipated, Grantee must give thirty (30) days' prior written notice to Grantor. If the change is unanticipated, Grantee must give notice as soon as practicable thereafter. Grantor reserves the right to take any and all appropriate action as a result of such change(s).

15.2. <u>Failure to Provide Notification</u>. To the extent permitted by Illinois law (see Paragraph 21.2), Grantee must hold harmless Grantor for any acts or omissions of Grantor resulting from Grantee's failure to notify Grantor as required by Paragraph 15.1.

15.3. <u>Notice of Impact</u>. Grantee must notify Grantor in writing of any event, including, by not limited to, becoming a party to litigation, an investigation, or transaction that may have a material impact on Grantee's ability to perform under this Agreement. Grantee must provide notice to Grantor as soon as possible, but no later than five (5) days after Grantee becomes aware that the event may have a material impact.

15.4. <u>Effect of Failure to Provide Notice</u>. Failure to provide the notice described in this ARTICLE is grounds for termination of this Agreement and any costs incurred after the date notice should have been given may be disallowed.

ARTICLE XVI STRUCTURAL REORGANIZATION AND RECONSTITUTION OF BOARD MEMBERSHIP

16.1. Effect of Reorganization. This Agreement is made by and between Grantor and Grantee, as Grantee is currently organized and constituted. Grantor does not agree to continue this Agreement, or any license related thereto, should Grantee significantly reorganize or otherwise substantially change the character of its corporate structure, business structure or governance structure. Grantee must give Grantor prior notice of any such action or changes significantly affecting its overall structure or, for non-governmental grantees only, management makeup (for example, a merger or a corporate restructuring), and must provide all reasonable documentation necessary for Grantor to review the proposed transaction including financial records and corporate and shareholder minutes of any corporation which may be involved. Grantor reserves the right to terminate the Agreement based on whether the newly organized entity is able to carry out the requirements of the Award. This ARTICLE does not require Grantee to report on minor changes in the makeup of its board membership or governance structure, as applicable. Nevertheless, **PART TWO** or **PART THREE** may impose further restrictions. Failure to comply with this ARTICLE constitutes a material breach of this Agreement.

ARTICLE XVII CONFLICT OF INTEREST

17.1. <u>Required Disclosures</u>. Grantee must immediately disclose in writing any potential or actual Conflict of Interest to Grantor. 2 CFR 200.113; 30 ILCS 708/35.

17.2. <u>Prohibited Payments</u>. Payments made by Grantor under this Agreement must not be used by Grantee to compensate, directly or indirectly, any person currently holding an elective office in this State including, but not limited to, a seat in the General Assembly. In addition, where Grantee is not an instrumentality of the State of Illinois, as described in this Paragraph, Grantee must request permission from Grantor to compensate, directly or indirectly, any person employed by an office or agency of the State of Illinois. An instrumentality of the State of Illinois includes, without limitation, State departments, agencies, boards, and State universities. An instrumentality of the State of Illinois does not include, without limitation, units of Local Government and related entities.

17.3. <u>Request for Exemption</u>. Grantee may request written approval from Grantor for an exemption from Paragraph 17.2. Grantee acknowledges that Grantor is under no obligation to provide such exemption and that Grantor may grant an such exemption subject to additional terms and conditions as Grantor may require.

ARTICLE XVIII EQUIPMENT OR PROPERTY

18.1. <u>Purchase of Equipment</u>. For any equipment purchased in whole or in part with Grant Funds, if Grantor determines that Grantee has not met the conditions of 2 CFR 200.439, the costs for such equipment will be disallowed. Grantor must notify Grantee in writing that the purchase of equipment is disallowed.

18.2. <u>Prohibition against Disposition/Encumbrance</u>. Any equipment, material, or real property that Grantee purchases or improves with Grant Funds must not be sold, transferred, encumbered (other than original financing) or otherwise disposed of during the Award Term without Prior Approval of Grantor unless a longer period is required in <u>PART TWO</u> or <u>PART THREE</u> and permitted by 2 CFR Part 200 Subpart D. Use or disposition of real property acquired or improved using Grant Funds must comply with the requirements of 2 CFR 200.311. Real property, equipment, and intangible property that are acquired or improved in whole or in part using Grant Funds are subject to the provisions of 2 CFR 200.316. Grantor may require the Grantee to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with this Award and that use and disposition conditions apply to the property.

18.3. Equipment and Procurement. Grantee must comply with the uniform standards set forth in 2 CFR 200.310–200.316 governing the management and disposition of property, the cost of which was supported by Grant Funds. Any waiver from such compliance must be granted by either the President's Office of Management and Budget, the Governor's Office of Management and Budget, or both, depending on the source of the Grant Funds used. Additionally, Grantee must comply with the standards set forth in 2 CFR 200.317-200.326 to establish procedures to use Grant Funds for the procurement of supplies and other expendable property, equipment, real property and other services.

18.4. Equipment Instructions. Grantee must obtain disposition instructions from Grantor when equipment, purchased in whole or in part with Grant Funds, is no longer needed for their original purpose. Notwithstanding anything to the contrary contained in this Agreement, Grantor may require transfer of any equipment to Grantor or a third party for any reason, including, without limitation, if Grantor terminates the Award or Grantee no longer conducts Award activities. Grantee must properly maintain, track, use, store and insure the equipment according to applicable best practices, manufacturer's guidelines, federal and state laws or rules, and Grantor requirements stated herein.

18.5. <u>Domestic Preferences for Procurements</u>. In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, Grantee must, to the greatest extent practicable under this Award, provide a

preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Paragraph must be included in all subawards and in all contracts and purchase orders for work or products under this Award.

ARTICLE XIX PROMOTIONAL MATERIALS; PRIOR NOTIFICATION

19.1. <u>Promotional and Written Materials</u>. Use of Grant Funds for promotions is subject to the prohibitions for advertising or public relations costs in 2 CFR 200.421(e). In the event that Grant Funds are used in whole or in part to produce any written publications, announcements, reports, flyers, brochures or other written materials, Grantee must obtain Prior Approval for the use of those funds (2 CFR 200.467) and must include in these publications, announcements, reports, flyers, brochures are all other such material, the phrase "Funding provided in whole or in part by the [Grantor]." 2 CFR 200.467. Exceptions to this requirement must be requested, in writing, from Grantor and will be considered authorized only upon written notice thereof to Grantee.

19.2. <u>Prior Notification/Release of Information</u>. Grantee must notify Grantor ten (10) days prior to issuing public announcements or press releases concerning work performed pursuant to this Agreement, or funded in whole or in part by this Agreement, and must cooperate with Grantor in joint or coordinated releases of information.

ARTICLE XX

20.1. <u>Maintenance of Insurance</u>. Grantee must maintain in full force and effect during the Term of this Agreement casualty and bodily injury insurance, as well as insurance sufficient to cover the replacement cost of any and all real or personal property, or both, purchased or, otherwise acquired, or improved in whole or in part, with funds disbursed pursuant to this Agreement. 2 CFR 200.310. Additional insurance requirements may be detailed in <u>PART TWO</u> or <u>PART THREE</u>.

20.2. <u>Claims</u>. If a claim is submitted for real or personal property, or both, purchased in whole with funds from this Agreement and such claim results in the recovery of money, such money recovered must be surrendered to Grantor.

ARTICLE XXI LAWSUITS AND INDEMNIFICATION

21.1. Independent Contractor. Neither Grantee nor any employee or agent of Grantee acquires any employment rights with Grantor by virtue of this Agreement. Grantee must provide the agreed services and achieve the specified results free from the direction or control of Grantor as to the means and methods of performance. Grantee must provide its own equipment and supplies necessary to conduct its business; provided, however, that in the event, for its convenience or otherwise, Grantor makes any such equipment or supplies available to Grantee, Grantee's use of such equipment or supplies provided by Grantor pursuant to this Agreement is strictly limited to official Grantor or State of Illinois business and not for any other purpose, including any personal benefit or gain.

21.2. Indemnification and Liability.

(a) Non-governmental entities. This subparagraph applies only if Grantee is a nongovernmental entity. Grantee must hold harmless Grantor against any and all liability, loss, damage, cost or expenses, including attorneys' fees, arising from the intentional torts, negligence or breach of contract of Grantee, with the exception of acts performed in conformance with an explicit, written directive of Grantor. Indemnification by Grantor is governed by the State Employee Indemnification Act (5 ILCS 350/.01 et seq.) as interpreted by the Illinois Attorney General. Grantor makes no representation that Grantee, an independent contractor, will qualify or be eligible for indemnification under said Act.

(b) Governmental entities. This subparagraph applies only if Grantee is a governmental unit as designated in Paragraph 3.2. Neither Party shall be liable for actions chargeable to the other Party under this Agreement including, but not limited to, the negligent acts and omissions of the other Party's agents, employees or subcontractors in the performance of their duties as described under this Agreement, unless such liability is imposed by law. This Agreement is not construed as seeking to enlarge or diminish any obligation or duty owed by one Party against the other or against a third party.

ARTICLE XXII MISCELLANEOUS

22.1. <u>Gift Ban</u>. Grantee is prohibited from giving gifts to State employees pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/10-10) and Illinois Executive Order 15-09.

22.2. <u>Assignment Prohibited</u>. This Agreement must not be sold, assigned, or transferred in any manner by Grantee, to include an assignment of Grantee's rights to receive payment hereunder, and any actual or attempted sale, assignment, or transfer by Grantee without the Prior Approval of Grantor in writing renders this Agreement null, void and of no further effect.

22.3. <u>Copies of Agreements upon Request</u>. Grantee must, upon request by Grantor, provide Grantor with copies of contracts or other agreements to which Grantee is a party with any other State agency.

22.4. <u>Amendments</u>. This Agreement may be modified or amended at any time during its Term by mutual consent of the Parties, expressed in writing and signed by the Parties.

22.5. <u>Severability</u>. If any provision of this Agreement is declared invalid, its other provisions will remain in effect.

22.6. <u>No Waiver</u>. The failure of either Party to assert any right or remedy pursuant to this Agreement will not be construed as a waiver of either Party's right to assert such right or remedy at a later time or constitute a course of business upon which either Party may rely for the purpose of denial of such a right or remedy.

22.7. <u>Applicable Law; Claims</u>. This Agreement and all subsequent amendments thereto, if any, are governed and construed in accordance with the laws of the State of Illinois. Any claim against Grantor arising out of this Agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1 et seq. Grantor does not waive sovereign immunity by entering into this Agreement.

22.8. <u>Compliance with Law</u>. This Agreement and Grantee's Obligations and services hereunder must be performed in compliance with all applicable federal and State laws, including, without limitation, federal regulations, State administrative rules, including but not limited to 44 III. Admin. Code Part 7000, laws and rules which govern disclosure of confidential records or other information obtained by Grantee concerning persons served under this Agreement, and any license requirements or professional certification provisions.

22.9. <u>Compliance with Freedom of Information Act</u>. Upon request, Grantee must make available to Grantor all documents in its possession that Grantor deems necessary to comply with requests made under the Freedom of Information Act. 5 ILCS 140/7(2).

22.10. Precedence.

(a) Except as set forth in subparagraph (b), below, the following rules of precedence are controlling for this Agreement: In the event there is a conflict between this Agreement and any of the exhibits or attachments hereto, this Agreement controls. In the event there is a conflict between <u>PART</u> <u>ONE</u> and <u>PART TWO</u> or <u>PART THREE</u> of this Agreement, <u>PART ONE</u> controls. In the event there is a conflict between <u>PART TWO</u> and <u>PART THREE</u> of this Agreement, <u>PART TWO</u> controls. In the event there is a conflict between there is a conflict between there is a conflict between the event there is a conflict between this Agreement and relevant statute(s) or rule(s), the relevant statute(s) or rule(s) controls.

(b) Notwithstanding the provisions in subparagraph (a), above, if a relevant federal or state statute(s) or rule(s) requires an exception to this Agreement's provisions, or an exception to a requirement in this Agreement is granted by GATU, such exceptions must be noted in **PART TWO** or **PART THREE**, and in such cases, those requirements control.

22.11. <u>Illinois Grant Funds Recovery Act</u>. In the event of a conflict between the Illinois Grant Funds Recovery Act and the Grant Accountability and Transparency Act, the provisions of the Grant Accountability and Transparency Act control. 30 ILCS 708/80.

22.12. <u>Headings</u>. Articles and other headings contained in this Agreement are for reference purposes only and are not intended to define or limit the scope, extent or intent of this Agreement or any provision hereof.

22.13. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which are considered to be one and the same agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart. Duplicated signatures, signatures transmitted via facsimile, or signatures contained in a Portable Document Format (PDF) document are deemed original for all purposes.

22.14. <u>Attorney Fees and Costs</u>. Unless prohibited by law, if Grantor prevails in any proceeding to enforce the terms of this Agreement, including any administrative hearing pursuant to the Grant Funds Recovery Act or the Grant Accountability and Transparency Act, Grantor has the right to recover reasonable attorneys' fees, costs and expenses associated with such proceedings.

22.15. <u>Continuing Responsibilities</u>. The termination or expiration of this Agreement does not affect: (a) the right of Grantor to disallow costs and recover funds based on a later audit or other review; (b) the obligation of the Grantee to return any funds due as a result of later refunds, corrections or other transactions, including, without limitation, final Indirect Cost Rate adjustments and those funds obligated pursuant to ARTICLE XIV; (c) the CYEFR(s); (d) audit requirements established in 44 III. Admin. Code 7000.90 and ARTICLE XII ; (e) property management and disposition requirements established in 2 CFR 200.310 through 2 CFR 200.316 and ARTICLE XVIII; or (f) records related requirements pursuant to ARTICLE IX. 44 III. Admin. Code 7000.440.

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EXHIBIT A

PROJECT DESCRIPTION

Grantee must complete the Award Activities described on this <u>Exhibit A</u>, the Deliverables and Milestones listed on <u>Exhibit B</u> and the Performance Measures listed on <u>Exhibit D</u> within the term of this Agreement, as provided in Paragraph 2.1, herein.

AUTHORITY: The Grantor is authorized to make this Award pursuant to 20 ILCS 605/605-55 and/or 20 ILCS 605/605-30.

The purpose of this authority is as follows:

To make and enter into contracts, including grants, as authorized pursuant to appropriations by the General Assembly. and/or to use the State and federal programs, grants, and subsidies that are available to assist in the discharge of the provisions of the Civil Administrative Code of Illinois.

PROJECT DESCRIPTION:

The Grantee is a governmental entity providing services to the City of Des Plaines in Cook County.

Grant funds will be utilized for a portion of the costs, including any that are prior incurred, associated with the design and construction of new sidewalks, sidewalk replacement, and curb and alley rehabilitation in Granteeowned areas of the City of Des Plaines, Illinois. This project is necessary to connect residential, commercial, and recreational areas together via a continuous, safe, and walkable route, and eliminate hazardous conditions such as pedestrian and motor vehicle conflicts or tripping hazards. New sidewalk will be constructed, and existing sidewalk will be rehabilitated on Algonquin Road between Elmhurst Road and Mount Prospect Road. New sidewalk will be constructed on Algonquin Road between 624 and 658 and between 1205 Doreen Drive and 15 Algonquin Road. Sidewalk replacement will occur at various locations where existing sidewalk is broken or joints have uplifted causing safety hazards. All other costs associated with the completion of the project will be paid using other funding sources.

Specifically, Grant funds will include a portion of the costs associated with the project as follows:

- Design/Engineering to include costs associated with completing a topographic survey.
- **Paving/Concrete/Masonry** to include costs associated with the removal, purchase, installation, and replacement of PCC Sidewalk.
- **Excavation/Site Prep/Demo** to include costs associated with earth excavation of the site area to build the new sidewalks.

The completion of this project will benefit the public by connecting residential, commercial, and recreational areas together via a safe and walkable route for 1000 residents and businesses to utilize. Additionally, this project will positively impact thousands of residents and businesses, indirectly in surrounding areas.

EXHIBIT B

DELIVERABLES OR MILESTONES

To be stated on the initial submitted Periodic Performance Report (PPR), as directed by the Report Deliverable Schedule, the Grantee will provide a detailed task list of projected deliverables, which must be approved by Grantor. These tasks and associated due dates, and any subsequent revisions, shall be incorporated by reference into this Agreement. These tasks will be used to measure performance throughout the life of the Award and can be updated and reported on each PPR reporting due date.

EXHIBIT C

CONTACT INFORMATION

CONTACTS FOR NOTIFICATION AND GRANT ADMINISTRATION:

Unless specified elsewhere, all notices required or desired to be sent by either Party must be sent to the persons listed below. Grantee must notify Grantor of any changes in its contact information listed below within five (5) business days from the effective date of the change, and Grantor must notify Grantee of any changes to its contact information as soon as practicable. The Party making a change must send any changes in writing to the contact for the other Party. No amendment to this Agreement is required if information in this Exhibit is changed.

FOR OFFICIAL GRANT NOTIFICATIONS

GRANTOR CONTACT		GRANTEE CONTACT	
Name:	Kristin A. Richards	Name:	Andrew Goczkowski
Title:	Director	Title:	Mayor
Address:	607 E. Adams St. Springfield, IL 62701	Address:	1420 MINER ST Des Plaines, IL 60016-4484

GRANTEE PAYMENT ADDRESS

(If different than the address above)

Address: N/A

FOR GRANT ADMINISTRATION

GRANTOR CONTACT

GRANTEE CONTACT

Name:	Tammy Greco	Name:	Becka Shipp
Title:	Grant Manager	Title:	Assistant Director of Engineering
Address:	607 E. Adams St.		
	Springfield, IL 62701	Address:	1420 MINER ST
Phone:	217-785-9974		Des Plaines, IL 60016-4484
TTY#:	(800) 785-6055	Phone:	847-391-5390
Email	tammy.m.greco@illinois.gov	TTY#:	N/A
Address:		Email	bshipp@desplaines.org
		Address:	

GRANTEE DESIGNEES

The following are designated as Authorized Designee(s) for the Grantee (See **PART TWO**, ARTICLE XXIII):

Authorized Designee:	Becka Shipp	
Authorized Designee Title:	Assistant Director of Engineering	
Authorized Designee Phone:	(847) 391-5390	
Authorized Designee Email:	bshipp@desplaines.org	
	Authorized Designee Signature:	
	Authorized Signatory Approval:	
Authorized Designee:	Timothy Oakley	
Authorized Designee Title:	Director of Public Works and Engineering	g
Authorized Designee Phone:	(847) 391-5390	
Authorized Designee Email:	toakley@desplaines.org	
	Authorized Designee Signature:	

GRANTOR CONTACT FOR AUDIT OR CONSOLIDATED YEAR-END FINANCIAL REPORTS QUESTIONS-AUDIT UNIT

Email: <u>externalauditunit@illinois.gov</u>

GRANTOR CONTACT FOR FINANCIAL CLOSEOUT QUESTIONS-PROGRAM ACCOUNTANT

Name:	James Kanter
Email:	james.f.kanter@illinois.gov
Phone:	000-000-0000
Fax#:	N/A

Address: 607 E. Adams St. Springfield, IL 62701

EXHIBIT D

PERFORMANCE MEASURES AND STANDARDS

To be stated on the initial submitted Periodic Performance Report (PPR), as directed by the Report Deliverable Schedule, the Grantee will incorporate project specific performance measures within the corresponding section of the PPR. The project specific performance measures will encompass the following standardized performance measures listed below.

- Did the deliverables specified in the task list submitted pursuant to Exhibit B lead to the completion of the project described in Exhibit A?
- Given the total amount of Grant Funds available, does the percent currently drawn and expended directly correlate to the percent of the completion of the project to date?
- At the time of Award closeout, has the Grantee fulfilled the public purpose of the project stated in Exhibit A?

The Grantor reserves the right to deny any voucher request(s) at its discretion, based on lack of progress toward meeting completion goals. If the Grantee fails to meet any of the performance measures/goals, and if deemed appropriate at the discretion of the Grantor, the Grant Funds may be decreased by an amount proportionate to the size of the shortfall, and/or the Grantee may be responsible for the return of the Grant Funds in the amount specified by the Grantor. Grantor may initiate a grant modification(s) to de-obligate Grant Funds based on non-performance. The Grantee will submit grant modification requests as necessary in a timely manner, including a request to de-obligate Grant Funds in an amount that the Grantee determines will be unspent by the end of the Grant Agreement Term.

EXHIBIT E

SPECIFIC CONDITIONS

Grantor may remove (or reduce) a Specific Condition included in this Exhibit by providing written notice to the Grantee, in accordance with established procedures for removing a Specific Condition.

There were no conditions resulting from the Internal Control Questionnaire (ICQ).

There were no conditions resulting from the Programmatic Risk Assessment.

PART TWO - GRANTOR-SPECIFIC TERMS

In addition to the uniform requirements in **<u>PART ONE</u>**, Grantor has the following additional requirements for its Grantee:

ARTICLE XXIII AUTHORIZED SIGNATORY

23.1. <u>Authorized Signatory</u>. In processing this Award and related documentation, Grantor will only accept materials signed by the Authorized Signatory or Designee of this Agreement, as designated or prescribed in the Grantee's signature block or on <u>Exhibit C</u>. If the Authorized Signatory chooses to assign a designee to sign or submit materials required by this Agreement to Grantor, the Authorized Signatory must either send written notice to Grantor indicating the name of the designee, or provide notice as set forth in <u>Exhibit C</u>. Without this notice, Grantor will reject any materials signed or submitted on the Grantee's behalf by anyone other than the Authorized Signatory. The Authorized Signatory must approve each Authorized Designee separately by signing as indicated on <u>Exhibit C</u> or on the appropriate form provided by Grantor. If an Authorized Designee(s) appears on <u>Exhibit C</u>, the Grantee should verify the information and indicate any changes as necessary. Signatures of both the Authorized Signatory and the Authorized Designee are required in order for the Authorized Designee to have signature authority under this Agreement.

ARTICLE XXIV ADDITIONAL AUDIT PROVISIONS

24.1. <u>Discretionary Audit</u>. The Grantor may, at any time and in its sole discretion, require a programspecific audit, or other audit, SAS 115/AU-C265 letters (Auditor's Communication of Internal Control Related Matters) and SAS 114/AU-C260 letters (Auditor's Communication With Those Charged With Governance).

ARTICLE XXV ADDITIONAL MONTORING PROVISIONS

25.1. Access to Documentation. The Award will be monitored for compliance in accordance with the terms and conditions of this Agreement, together with appropriate programmatic rules, regulations, and/or guidelines that the Grantor promulgates or implements. The Grantee must permit any agent authorized by the Grantor, upon presentation of credentials, in accordance with all methods available by law, full access to and the right to examine any document, papers and records either in hard copy or electronic format, of the Grantee involving transactions relating to this Award.

25.2. <u>Cooperation with Audits and Inquiries, Confidentiality</u>. Pursuant to ARTICLE IX, above, the Grantee is obligated to cooperate with the Grantor and other legal authorities in any audit or inquiry related to the Award. The Grantor or any other governmental authority conducting an audit or inquiry may require the Grantee to keep confidential any audit or inquiry and to limit internal disclosure of the audit or inquiry to those Grantee personnel who are necessary to support the Grantee's response to the audit or inquiry. This confidentiality requirement does not limit Grantee's right to discuss an audit or inquiry with its legal counsel. If a third party seeks to require the Grantee, pursuant to any law, regulation, or legal process, to disclose an audit or inquiry that has been deemed confidential by the Grantor or other governmental authority, the Grantee must promptly notify the entity that is conducting the audit or inquiry of such effort so that the entity that is conducting the audit or inquiry may seek a protective order, take other appropriate action, or waive compliance by the Grantee with the confidentiality requirement.

ARTICLE XXVI ADDITIONAL INTEREST PROVISIONS

26.1. Interest Earned on Grant Funds. Interest earned on Grant Funds in an amount up to \$500 per year may be retained by the Grantee for administrative expenses unless otherwise provided in **PART THREE**. Any additional interest earned on Grant Funds above \$500 per year must be returned to the Grantor pursuant to Paragraphs 4.3 and 29.2 herein, or as otherwise instructed by the Grant Manager or as set forth in **PART THREE**. All interest earned must be expended prior to Grant Funds. Any unspent Grant Funds or earned interest unspent must be returned as Grant Funds to the Grantor as described in Paragraphs 4.3 and 29.2 herein. All interest earned on Grant runds must be accounted for and reported to the Grantor as provided in ARTICLE X herein. If applicable, the Grantor will remit interest earned and returned by Grantee to the U.S. Department of Health and Human Services Payment Management System through the process set forth at 2 CFR 200.305(b)(9), or as otherwise directed by the federal awarding agency. The provisions of this Paragraph are inapplicable to the extent any statute, rule or program requirement provides for different treatment of interest income. Any provision that deviates from this paragraph is set forth in **PART THREE**.

ARTICLE XXVII ADDITIONAL BUDGET PROVISIONS

27.1. <u>Restrictions on Line Item Transfers</u>. Unless set forth otherwise in <u>PART THREE</u> herein, Budget line item transfers within the guidelines set forth in paragraph 6.2 herein, which would not ordinarily require approval from Grantor, but vary more than ten percent (10%) of the current approved Budget line item amount, are considered changes in the project scope and require Prior Approval from Grantor pursuant to 44 III. Admin. Code 7000.370(b).

ARTICLE XXVIII ADDITIONAL REPRESENTATIONS AND WARRANTIES

28.1. <u>Grantee Representations and Warranties</u>. In connection with the execution and delivery of this Agreement, the Grantee makes the following representations and warranties to Grantor:

(a) That it has no public or private interest, direct or indirect, and will not acquire, directly or indirectly any such interest which does or may conflict in any manner with the performance of the Grantee's services and obligations under this Agreement;

(b) That no member of any governing body or any officer, agent or employee of the State, has a personal financial or economic interest directly in this Agreement, or any compensation to be paid hereunder except as may be permitted by applicable statute, regulation or ordinance;

(c) That there is no action, suit or proceeding at law or in equity pending, nor to the best of Grantee's knowledge, threatened, against or affecting the Grantee, before any court or before any governmental or administrative agency, which will have a material adverse effect on the performance required by this Agreement;

(d) That to the best of the Grantee's knowledge and belief, the Grantee, its principals and key project personnel:

(i) Are not presently declared ineligible or voluntarily excluded from contracting with any federal or State department or agency;

(ii) Have not, within a three (3)-year period preceding this Agreement, been convicted of any felony; been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; had a civil judgment rendered against them for commission of fraud; been found in violation of federal or state antitrust statutes; or been convicted of embezzlement, theft, larceny, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property;

(iii) Are not presently indicted for, or otherwise criminally or civilly charged, by a government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph(ii) of this certification; and

(iv) Have not had, within a three (3)-year period preceding this Agreement, any judgment rendered in an administrative, civil or criminal matter against the Grantee, or any entity associated with its principals or key personnel, related to a grant issued by any federal or state agency or a local government.

Any request for an exception to the provisions of this subparagraph (d) must be made in writing, listing the name of the individual, home address, type of conviction and date of conviction; and

(e) Grantee certifies that it is not currently operating under, or subject to, any cease and desist order, or subject to any informal or formal regulatory action, and, to the best of Grantee's knowledge, that it is not currently the subject of any investigation by any state or federal regulatory, law enforcement or legal authority. Should it become the subject of an investigation by any state or federal regulatory, law enforcement or legal authority, Grantee shall promptly notify Grantor of any such investigation. Grantee acknowledges that should it later be subject to a cease and desist order, Memorandum of Understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, that Grantor is authorized to declare Grantee out of compliance with this Agreement and suspend or terminate the Agreement pursuant to ARTICLE XIII herein and any applicable rules.

ARTICLE XXIX

ADDITIONAL TERMINATION, SUSPENSION, BILLING SCHEDULE AND NON-COMPLIANCE PROVISIONS

29.1. <u>Remedies for Non-Compliance</u>. If Grantor suspends or terminates this Agreement pursuant to ARTICLE XIII herein, Grantor may also elect any additional remedy allowed by law, including, but not limited to, one or more of the following remedies:

(a) Direct the Grantee to refund some or all of the Grant Funds disbursed to it under this Agreement; and

(b) Direct the Grantee to remit an amount equivalent to the "Net Salvage Value" of all equipment or materials purchased with Grant Funds provided under this Agreement. For purposes of this Agreement, "Net Salvage Value" is defined as the amount realized, or that the Parties agree is likely to be realized from, the sale of equipment or materials purchased with Grant Funds provided under this Agreement at its current fair market value, less selling expenses.

29.2. <u>Grant Refunds</u>. In accordance with the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq.*, the Grantee must, within forty-five (45) days of the effective date of a termination of this Agreement, refund to Grantor, any balance of Grant Funds not spent or not obligated as of that date.

29.3. <u>Grant Funds Recovery Procedures</u>. In the event that Grantor seeks to recover from Grantee Funds received pursuant to this Award that: (i) Grantee cannot demonstrate were properly spent, or (ii) have not been expended or legally obligated by the time of expiration or termination of this Award, the Parties agree to follow the procedures set forth in the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq*. (GFRA), for the recovery of Grant Funds, including the informal and formal hearing requirements. All remedies available in Section 6 of the GFRA will apply to these proceedings. The Parties agree that Grantor's Administrative Hearing Rules (56 Ill. Admin. Code Part 2605) and/or any other applicable hearing rules shall govern these proceedings.

29.4. <u>Grantee Responsibility</u>. Grantee will be held responsible for the expenditure of all Grant Funds received through this Award, whether expended by Grantee or a subrecipient or contractor of Grantee. Grantor may

seek any remedies against Grantee permitted pursuant to this Agreement and 2 CFR 200.339 for the action of a subrecipient or contractor of Grantee that is not in compliance with the applicable statutes, regulations or the terms and conditions of this Award.

29.5. <u>Billing Schedule</u>. In accordance with paragraph 4.8, herein Grantee must submit all payment requests to Grantor within thirty (30) days of the end of the quarter, unless another billing schedule is specified in **PART THREE** or Paragraph 2.3. Failure to submit such payment request timely will render the amounts billed an unallowable cost which Grantor cannot reimburse. In the event that Grantee is unable, for good cause, to submit its payment request timely, Grantee must timely notify Grantor and may request an extension of time to submit the payment request. Grantor's approval of Grantee's request for an extension cannot be unreasonably withheld. The payment requirements of this Paragraph supersede those set forth in Paragraph 4.8.

ARTICLE XXX ADDITIONAL MODIFICATION PROVISIONS

30.1. <u>Modifications by Operation of Law</u>. This Agreement is subject to such modifications as the Grantor determines, in its sole discretion, may be required by changes in federal or State law or regulations applicable to this Agreement. Grantor will initiate such modifications, and Grantee will be required to agree to the modification in writing as a condition of continuing the Award. Any such required modification will be incorporated into and become part of this Agreement as if fully set forth herein. The Grantor will timely notify the Grantee of any pending implementation of or proposed amendment to any laws or regulations of which it has notice.

30.2. Discretionary Modifications. If either the Grantor or the Grantee wishes to modify the terms of this Agreement other than as set forth in ARTICLES V and VI and Paragraphs 30.1 and 30.3, written notice of the proposed modification must be given to the other Party. Modifications will only take effect when agreed to in writing by both the Grantor and the Grantee. However, if the Grantor notifies the Grantee in writing of a proposed modification, and the Grantee fails to respond to that notification, in writing, within thirty (30) days, the Grantor may commence a process to suspend or terminate this Award. In making an objection to the proposed modification, the Grantee must specify the reasons for the objection and the Grantor's notice to the Grantee must contain the Grantee name, Agreement number, Amendment number and purpose of the revision. If the Grantee seeks any modification to the Agreement, the Grantee must submit a detailed narrative explaining why the Project cannot be completed in accordance with the terms of the Agreement and how the requested modification will ensure completion of the Grant Activities, Deliverables, Milestones and/or Performance Measures (**Exhibits A**, **B** and **D**).

30.3. <u>Unilateral Modifications</u>. The Parties agree that Grantor may, in its sole discretion, unilaterally modify this Agreement without prior approval of the Grantee when the modification is initiated by Grantor for the sole purpose of increasing the Grantee's funding allocation as additional funds become available for the Award during the program year covered by the Term of this Agreement.

30.4. <u>Management Waiver</u>. The Parties agree that the Grantor may issue a waiver of specific requirements of this Agreement after the term of the Agreement has expired. These waivers are limited to nonmaterial changes to specific provisions that the Grantor determines are necessary to place the Grantee in administrative compliance with the requirements of this Agreement. A management waiver issued after the Term of the Agreement has expired will supersede the original requirements of this Agreement that would normally require a modification of this Agreement to be executed. The Grantor will make no modifications of this Agreement not agreed to prior to the expiration of the Agreement beyond what is specifically set forth in this Paragraph.

30.5. <u>Term Extensions</u>. The Grantee acknowledges that all Grant Funds must be expended or legally obligated, and all Grant Activities, Deliverables, Milestones and Performance Measures (<u>Exhibits A</u>, <u>B</u> and <u>D</u>) must be completed during the Term of the Agreement. Extensions of the Term will be granted only for good cause, subject to the Grantor's discretion. Pursuant to the Grant Funds Recovery Act (30 ILCS 705/1 *et seq.*), no Award may be

extended in total beyond a two (2)-year period unless the Grant Funds are expended or legally obligated during that initial two-year period, or unless Grant Funds are disbursed for reimbursement of costs previously incurred by the Grantee. If Grantee requires an extension of the Award Term, Grantee should submit a written request to the Grant Manager at least sixty (60) days prior to the end of the Award Term or extended Award Term, as applicable, stating the reason for the extension. If Grantee provides reasonable extenuating circumstances, Grantee may request an extension of the Award Term with less than sixty (60) days remaining.

ARTICLE XXXI ADDITIONAL CONFLICT OF INTEREST PROVISIONS

31.1. <u>Bonus or Commission Prohibited</u>. The Grantee shall not pay any bonus or commission for the purpose of obtaining the Grant Funds awarded under this Agreement.

31.2. <u>Hiring State Employees Prohibited</u>. No State officer or employee may be hired to perform services under this Agreement on behalf of the Grantee, or be paid with Grant Funds derived directly or indirectly through this Award without the written approval of the Grantor unless Grantee is a State agency.

ARTICLE XXXII ADDITIONAL EQUIPMENT OR PROPERTY PROVISIONS

32.1. <u>Equipment Management</u>. The Grantee is responsible for replacing or repairing equipment and materials purchased with Grant Funds that are lost, stolen, damaged, or destroyed. Any loss, damage or theft of equipment and materials must be investigated and fully documented, and immediately reported to the Grantor and, where appropriate, the appropriate law enforcement authorities.

32.2. <u>Purchase of Real Property</u>. If permitted by the Award Budget and scope of activities provided in this Agreement, a Grantee may use the Grant Funds during the Award Term for the costs associated with the purchase of real property (as defined by 2 CFR 200.1) either through the use of reimbursement or advanced funds as permitted in Paragraph 2.3 of this Agreement for the following purposes and consistent with the Grantor's bondability guidelines and 2 CFR 200:

- (a) Cash payment of the entirety or a portion of the real property acquisition;
- (b) Cash Payment of a down payment for the acquisition;
- (c) Standard and commercially reasonable costs required to be paid at the acquisition closing (*i.e.*, closing costs); or
- (d) Payments to reduce the debt incurred by Grantee to purchase the real property.

32.3. <u>Bonding Requirements</u>. If Grant Funds through this Award are used for construction or facility improvement projects that exceed the Simplified Acquisition Threshold, the Grantee must comply with the minimum bonding requirements listed in 2 CFR 200.326(a) – (c). Grantor will not accept the Grantee's own bonding policy and requirements.

32.4. <u>Lien Requirements</u>. Grantor may direct Grantee in writing to record a lien or notice of State or federal interest on the property purchased or improved with Grant Funds. 2 CFR 200.316. If Grantor makes this direction and the Grantee does not comply, the Grantor may: (a) record the lien or notice of State or federal interest and reduce the amount of the Grant Funds by the cost of recording the lien or notice of State or federal interest, or (b) suspend this Award until Grantee complies with Grantor's direction.

ARTICLE XXXIII APPLICABLE STATUTES

To the extent applicable, Grantor and Grantee shall comply with the following:

33.1. <u>Grantee Responsibility</u>. Grantee is responsible for ensuring compliance with all applicable laws, rules and regulations, including, but not limited to those specifically referenced herein. Except where expressly required by applicable laws and regulations, the Grantor shall not be responsible for monitoring Grantee's compliance.

33.2. Land Trust Beneficial Interest Disclosure Act (765 ILCS 405/2.1). No Grant Funds will be paid to any trustee of a land trust, or any beneficiary or beneficiaries of a land trust, for any purpose relating to the land, which is the subject of such trust, any interest in such land, improvements to such land or use of such land unless an affidavit is first filed with the Grantor identifying each beneficiary of the land trust by name and address and defining such interest therein. This affidavit must be filed with the Illinois Office of the Comptroller as an attachment to this Agreement.

33.3. <u>Historic Preservation Act (20 ILCS 3420/1 et seq.)</u>. The Grantee will not expend Grant Funds under this Agreement which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Department of Natural Resources, Historic Preservation Division. The Grantee must not expend Grant Funds under this Agreement for any project, activity, or program that can result in changes in the character or use of historic property, if any historic property is located in the area of potential effects without the approval of the Illinois Department of Natural Resources, Historic Preservation Division. 20 ILCS 3420/3(f).

33.4. <u>Victims' Economic Security and Safety Act (820 ILCS 180 *et seq.*)</u>. If the Grantee has one (1) or more employees, it may not discharge or discriminate against an employee who is a victim of domestic or sexual violence, or who has a family or household member who is a victim of domestic or sexual violence, for taking up to the allowable amount of leave from work to address the domestic violence, pursuant to the Victims' Economic Security and Safety Act. 820 ILCS 180/20(a)(2). The Grantee is not required to provide paid leave under the Victims' Economic Security and Safety Act, but may not suspend group health plan benefits during the leave period. Any failure on behalf of the Grantee to comply with all applicable provisions of the Victims' Economic Security and Safety Act, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by statute or regulation.

33.5. Equal Pay Act of 2003 (820 ILCS 112 *et seq.*). If the Grantee has one (1) or more employees, it is prohibited by the Equal Pay Act of 2003 from: (a) discriminating between employees by paying unequal wages on the basis of sex for doing the same or substantially similar work; (b) discriminating between employees by paying wages to an African-American employee at a rate less than the rate at which the Grantee pays wages to another employee who is not African-American for the same or substantially similar work; (c) remedying violations of the Equal Pay Act of 2003 by reducing the wages of other employees or discriminating against any employee exercising their rights under the Equal Pay Act of 2003; and (d) screening job applicants based on their current or prior wages or salary histories, or requesting or requiring a wage or salary history from an individual as a condition of employment or consideration for employment. Any failure on behalf of the Grantee to comply with all applicable provisions of the Equal Pay Act of 2003, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by statute or regulation.

33.6. <u>Steel Products Procurement Act (30 ILCS 565/1 *et seq.*)</u>. The Grantee, if applicable, hereby certifies that any steel products used or supplied in accordance with this Award for a public works project shall be

manufactured or produced in the United States per the requirements of the Steel Products Procurement Act (30 ILCS 565/1 *et seq.*).

33.7. Business Enterprise for Minorities, Women, and Persons with Disabilities Act and Illinois Human <u>Rights Act (30 ILCS 575/0.01; 775 ILCS 5/2-105)</u>. The Grantee acknowledges and hereby certifies compliance with the provisions of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, and the equal employment practices of Section 2-105 of the Illinois Human Rights Act for the provision of services which are directly related to the Award activities to be performed under this Agreement.

33.8. Identity Protection Act (5 ILCS 179/1 et seq.) and Personal Information Protection Act (815 ILCS 530/1 et seq.). The Grantor is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, the Grantor will request social security numbers or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, Awards. The Grantor also collects confidential information for oversight and monitoring purposes.

Furnishing personal identity information, such as a social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by the Grantor as a result of state or federal laws, rules and regulations.

To the extent the Grantee collects or maintains protected personal information as part of carrying out the Award activities, the Grantee must maintain the confidentiality of the protected personal information in accordance with applicable law and as set forth below.

(a) Personal Information Defined. As used herein, "Personal Information" shall have the definition set forth in the Personal Information Protection Act, 815 ILCS 530/5 ("PIPA").

(b) Protection of Personal Information. The Grantee must use at least reasonable care to protect the confidentiality of Personal Information that is collected or maintained as part of the Award activities and (i) not use any Personal Information for any purpose outside the scope of the Award activities and (ii) except as otherwise authorized by the Grantor in writing, limit access to Personal Information to those of its employees, contractors, and agents who need such access for purposes consistent with the Award Activities. If Grantee provides any contractor or agent with access to Personal Information, it must require the contractor or agent to comply with the provisions of this Paragraph.

(c) Security Assurances. Grantee represents and warrants that it has established and will maintain safeguards against the loss and unauthorized access, acquisition, destruction, use, modification, or disclosure of Personal Information and shall otherwise maintain the integrity of Personal Information in its possession in accordance with any federal or state law privacy requirements, including PIPA. These safeguards must be reasonably designed to (i) ensure the security and confidentiality of the Personal Information, (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information, and (iii) protect against unauthorized access to or use of Personal Information. Additionally, Grantee will have in place policies, which provide for the secure disposal of documents and information which contain Personal Information, including but not limited to shredding documents and establishing internal controls over the authorized access to such information. 815 ILCS 530/40.

(d) Breach Response. In the event of any unauthorized access to, unauthorized disclosure of, loss of, damage to or inability to account for any Personal Information (a "Breach"), Grantee agrees that it will promptly, at its own expense: (i) report such Breach to the Grantor by telephone with immediate written confirmation sent by e-mail, describing in detail any accessed materials and identifying any individual(s) who may have been involved in such Breach; (ii) take all actions necessary or reasonably requested by the Grantor to stop, limit or minimize the Breach; (iii) restore and/or retrieve, as applicable, and return all Personal Information that was lost, damaged, accessed, copied or removed; (iv) cooperate in

all reasonable respects to minimize the damage resulting from such Breach; (v) provide any notice to Illinois residents as required by 815 ILCS 530/10, 815 ILCS 530/12 or applicable federal law, in consultation with the Grantor; and (vi) cooperate in the preparation of any report related to the Breach that the Grantor may need to present to any governmental body.

(e) Injunctive Relief. Grantee acknowledges that, in the event of a breach of this Paragraph, Grantor will likely suffer irreparable damage that cannot be fully remedied by monetary damages. Accordingly, in addition to any remedy which the Grantor may possess pursuant to applicable law, the Grantor retains the right to seek and obtain injunctive relief against any such breach in any Illinois court of competent jurisdiction.

(f) Compelled Access or Disclosure. The Grantee may disclose Personal Information if it is compelled by law, regulation, or legal process to do so, provided the Grantee gives the Grantor at least ten (10) days' prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance if the Grantor wishes to contest the access or disclosure.

ARTICLE XXXIV ADDITIONAL MISCELLANEOUS PROVISIONS

34.1. <u>Workers' Compensation Insurance, Social Security, Retirement and Health Insurance Benefits, and</u> <u>Taxes</u>. The Grantee must provide Workers' Compensation insurance where the same is required and accepts full responsibility for the payment of unemployment insurance, premiums for Workers' Compensation, Social Security and retirement and health insurance benefits, as well as all income tax deduction and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

34.2. <u>Required Notice</u>. Grantee agrees to give prompt notice to the Grantor of any event that may materially affect the performance required under this Agreement. Any notice or final decision by Grantor relating to (a) a Termination or Suspension (ARTICLE XIII), (b) Modifications, Management Waivers or Term Extensions (ARTICLE XXX) or (c) Assignments (Paragraph 22.2) must be executed by the Director of the Grantor or her or his authorized designee.

ARTICLE XXXV ADDITIONAL REQUIRED CERTIFICATIONS

The Grantee makes the following certifications as a condition of this Agreement. These certifications are required by State statute and are in addition to any certifications required by any federal funding source as set forth in this Agreement. Grantee's execution of this Agreement shall serve as its attestation that the certifications made herein are true and correct.

35.1. <u>Sexual Harassment</u>. The Grantee certifies that it has written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Grantee's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department of Human Rights and the Human Rights Commission; and (vii) protection against retaliation as provided by Sections 6-101 and 6-101.5 of the Illinois Human Rights Act. 775 ILCS 5/2-105(A)(4). A copy of the policies must be provided to the Grantor upon request.

35.2. <u>Federal, State and Local Laws; Tax Liabilities; State Agency Delinquencies</u>. The Grantee is required to comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. If Grantee is delinquent in filing and/or paying any federal, state and/or local taxes, the Grantor will disburse

Grant Funds only if the Grantee enters into an installment payment agreement with the applicable tax authority and remains in good standing with that authority. Grantee is required to tender a copy of all relevant installment payment agreements to the Grantor. In no event may Grantee utilize Grant Funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The execution of this Agreement by the Grantee is its certification that: (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Grantee; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.

35.3. <u>Lien Waivers</u>. If applicable, the Grantee must monitor construction to assure that necessary contractors' affidavits and waivers of mechanics liens are obtained prior to release of Grant Funds to contractors and subcontractors.

35.4. <u>Grant for the Construction of Fixed Works</u>. Grantee certifies that all Projects for the construction of fixed works which are financed in whole or in part with funds provided by this Agreement will be subject to the Prevailing Wage Act (820 ILCS 130/0.01 *et seq*.) unless the provisions of that Act exempt its application. In the construction of the Projects, Grantee must comply with the requirements of the Prevailing Wage Act including, but not limited to: (a) paying the prevailing rate of wages required by the Illinois Department of Labor, or a court on review, to all laborers, workers and mechanics performing work with Grant Funds provided through this Agreement, (b) inserting into all contracts for such construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the Project must be paid to all laborers, workers, and mechanics performing work under this Award; and (c) requiring all bonds of contractors to include a provision as will guarantee the faithful performance of the prevailing wage clause as provided by contract.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

PART THREE – PROJECT-SPECIFIC TERMS

In addition to the uniform requirements in **PART ONE** and Grantor-Specific Terms in **PART TWO**, Grantor has the following additional requirements for this Project:

ARTICLE XXXVI REPORT DELIVERABLE SCHEDULE

36.1. <u>External Audit Reports</u>. External Audit Reports may be required. Refer to ARTICLE XII of this Agreement to determine whether you are required to submit an External Audit Report and the applicable due date.

36.2. <u>Annual Financial Reports</u>. Annual Financial Reports may be required. Refer to Paragraph 12.2 of this Agreement to determine whether you are required to submit Annual Financial Reports.

36.3. <u>Required Periodic Reports</u>. Below is the required periodic reporting schedule for this Award.

July 2024

- Quarterly Periodic Financial Report (07/30/2024) Covering Period of 05/01/2024 06/30/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (07/30/2024) Covering Period of 05/01/2024 06/30/2024; Send To: Grant Manager

October 2024

- Quarterly Periodic Financial Report (10/30/2024) Covering Period of 07/01/2024 09/30/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (10/30/2024) Covering Period of 07/01/2024 09/30/2024; Send To: Grant Manager

January 2025

- Quarterly Periodic Financial Report (01/30/2025) Covering Period of 10/01/2024 12/31/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (01/30/2025) Covering Period of 10/01/2024 12/31/2024; Send To: Grant Manager

April 2025

- Quarterly Periodic Financial Report (04/30/2025) Covering Period of 01/01/2025 03/31/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (04/30/2025) Covering Period of 01/01/2025 03/31/2025; Send To: Grant Manager

July 2025

- Quarterly Periodic Financial Report (07/30/2025) Covering Period of 04/01/2025 06/30/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (07/30/2025) Covering Period of 04/01/2025 06/30/2025; Send To: Grant Manager

October 2025

- Quarterly Periodic Financial Report (10/30/2025) Covering Period of 07/01/2025 09/30/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (10/30/2025) Covering Period of 07/01/2025 09/30/2025; Send To: Grant Manager

January 2026

- Quarterly Periodic Financial Report (01/30/2026) Covering Period of 10/01/2025 12/31/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (01/30/2026) Covering Period of 10/01/2025 12/31/2025; Send To: Grant Manager

April 2026

- Quarterly Periodic Financial Report (04/30/2026) Covering Period of 01/01/2026 03/31/2026; Send To: Grant Manager
- Quarterly Periodic Performance Report (04/30/2026) Covering Period of 01/01/2026 03/31/2026; Send To: Grant Manager

June 2026

- Quarterly Periodic Financial Report (06/01/2026) Covering Period of 04/01/2026 04/30/2026; Send To: Grant Manager
- Quarterly Periodic Performance Report (06/01/2026) Covering Period of 04/01/2026 04/30/2026; Send To: Grant Manager
- End of grant Closeout Financial Report (06/15/2026) Covering Period of 05/01/2024 04/30/2026; Send To: Grant Manager
- End of grant Closeout Performance Report (06/15/2026) Covering Period of 05/01/2024 04/30/2026; Send To: Grant Manager

36.4. <u>Changes to Reporting Schedule</u>. Changes to the schedules for periodic reporting, the external audit reports and the annual financial reports do not require a formal modification to this Agreement pursuant to Paragraph 22.4 and ARTICLE XXX, and may be changed unilaterally by the Grantor if necessitated by a change in the project schedule or at the discretion of the Grantor. The Grantee may not modify the reporting deliverable schedules in ARTICLES X, XI, XII and XXXVI unilaterally, and must obtain prior written approval from Grantor or the Grant Accountability and Transparency Unit of the Governor's Office of Management and Budget, if applicable, to change any reporting deadlines.

ARTICLE XXXVII GRANT-SPECIFIC TERMS/CONDITIONS

37.1. <u>Funding</u>. If this Award is bond-funded, all expenditures shall be in accordance with all applicable bondability guidelines.

37.2. <u>Use of Real Property</u>. Grantee shall use any real property acquired, constructed or improved with Grant Funds pursuant to this Agreement to provide the programs and services specified herein for at least the Award Term stated in Paragraph 2.1. Grantee shall comply with the real property use and disposition requirements set forth in 2 CFR 200.311.

37.3. Projects Requiring External Sign-offs.

(1) Pursuant to applicable statute(s), this Award requires sign-off by the following State agency(ies). The status of the sign-off is indicated as of the date the Award is sent to the Grantee for execution:

	AGENCY	SIGN-OFF RECEIVED	SIGN-OFF OUTSTANDING
X	Illinois State Historic Preservation Office Illinois Dept. of Agriculture Illinois Dept. of Natural Resources Illinois Environmental Protection Agency NONE APPLICABLE	x	

While **any** external sign-off is outstanding, the provisions of Item (3), immediately below apply with respect to the disbursement of funds under this Award.

NOTE: The fact that a sign-off has been received in no way relieves the Grantee of its obligation to comply with any conditions or requirements conveyed by the applicable agency(ies) in conjunction with the issuance of the sign-off for the project funded under this Agreement.

(2) For projects subject to review by the Illinois Environmental Protection Agency (IEPA), the Grantee must, prior to construction, obtain a construction permit or "authorization to construct" from the IEPA pursuant to the provisions of the Environmental Protection Act, 415 ILCS 5/1 *et seq*.

(3) External Sign-Off Provisions:

- a.) The Project described in Exhibit A and funded under this Agreement is subject to review by the external agency(ies) indicated in Item (1) immediately above. Grantee must comply with requirements established by said agency(ies) relative to their respective reviews. Any requirements communicated to the Grantor shall be incorporated into this Agreement as follows: as an attachment to this Agreement (immediately following <u>PART THREE</u>) at the time of the Agreement execution. The Grantee is contractually obligated to comply with such requirements.
- **b.)** Grantee is responsible for coordinating directly with the applicable external agency(ies) relative to said reviews. Except as specifically provided below, the Grantor's obligation to disburse funds under this Agreement is contingent upon notification by the applicable agency(ies) that all requirements applicable to the project described in this Agreement have been satisfied. Upon receipt of said notification, disbursement of the Grant Funds shall be authorized in accordance with the provisions of Paragraph 2.3 herein.
- c.) Prior to notification of compliance by the applicable external agency(ies), the Grantee may request disbursement of funds **only** for the following purposes: administrative, contractual, legal, engineering, or architectural costs incurred which are necessary to allow for compliance by the Grantee of requirements established by the external agency(ies). FUNDS WILL NOT BE DISBURSED FOR LAND ACQUISITION OR ANY TYPE OF CONSTRUCTION OR OTHER ACTIVITY WHICH PHYSICALLY IMPACTS THE PROJECT SITE PRIOR TO RECEIPT BY THE GRANTOR OF THE REQUIRED NOTIFICATION FROM ALL APPLICABLE AGENCIES.
- **d.)** If external sign-offs are indicated in this paragraph 37.3, disbursement of Grant Funds (whether advance or scheduled) are subject to the restrictions set forth by the External Sign-Off Provisions of this paragraph 37.3. Upon receipt of all required sign-offs, the Grantor's

Accounting Division will be notified of authorization to disburse Grant Funds in accordance with the disbursement method indicated herein.

37.4. <u>Prevailing Wage Act Compliance</u>. The work to be performed under this Agreement is subject to the Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*). Grantee shall comply with all requirements of the Prevailing Wage Act, including but not limited to: (a) inserting into all contracts for construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the project shall be paid to all laborers, workers, and mechanics performing work under the Award and requiring all bonds of contractors to include a provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract and (b) all required reporting and documentation.

37.5. <u>Compliance with Illinois Works Jobs Program Act</u>. Grantee must comply with requirements in the Illinois Works Jobs Program Act (30 ILCS 559/Art. 20). For Awards with an estimated total project cost of \$500,000 or more, the Grantee will be required to comply with the Illinois Works Apprenticeship Initiative (30 ILCS 559/20-20 to 20-25) and all applicable administrative rules (*see* 14 Ill. Admin. Code Part 680). The "estimated total project cost" is a good faith approximation of the costs of an entire project being paid for in whole or in part by appropriated capital funds to construct a public work. Grantee must submit a Budget Supplement Form (available on the Grantor's website) to the Grantor within ninety (90) days of the execution of this Award. The goal of the Illinois Apprenticeship Initiative is that apprentices will perform either 10% of the total labor hours actually worked in each prevailing wage classification or 10% of the estimated labor hours in each prevailing wage classification, whichever is less. Of this goal, at least half of those apprenticeship hours shall be performed by graduates of the Illinois Works Preapprenticeship Program. Grantee is permitted to seek from the Grantor a waiver or reduction of this goal in certain circumstances pursuant to 30 ILCS 559/20-20(b). The Grantee must ensure compliance for the life of the entire project, including during the term of the Award and after the Term ends, if applicable, and will be required to report on and certify its compliance.

37.6. <u>Compliance with Business Enterprise Program</u>. If applicable to this Grant, Grantee acknowledges that it is required to comply with the Business Enterprise Program for Minorities, Females, and Persons with Disabilities Act ("BEP") (30 ILCS 575/0.01 *et seq.*), which establishes a goal for contracting with businesses that have been certified as owned and controlled by persons who are minority, female or who have disabilities. Grantee shall maintain compliance with the BEP Utilization Plan submitted in conjunction with the Agreement and shall comply with all reporting requirements.

Compliance with the Employment of Illinois Workers on Public Works Act. Grantee acknowledges 37.7. that it is required to comply with the Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01 et seq.) (the "Act"), which provides that whenever there is a period of excessive unemployment in Illinois (as defined by the Act), if the Grantee is using Grant Funds for (1) constructing or building any public works, or (2) performing the cleanup and on-site disposal of hazardous waste for the State of Illinois or any political subdivision of the State, then the Grantee shall employ at least 90% Illinois laborers on such project. Illinois laborers refers to any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident. Grantee may receive an exception from this requirement by submitting a request and supporting documents certifying that Illinois laborers are either not available or are incapable of performing the particular type of work involved. The certification must: (a) be submitted to the grant manager within the first quarter of the Award Term; (b) provide sufficient support that demonstrates the exception is met; (c) be signed by an authorized signatory of the Grantee; and (d) be approved by the grant manager. In addition, every contractor on a public works project or improvement or hazardous waste clean-up and on-site disposal project in this State may place on such work no more than 3 (or 6 in the case of a hazardous waste clean-up and on-site disposal project) of the contractor's regularly employed non-resident executive and technical experts.

37.8. <u>Interest on Grant Funds for this Award</u>. Because this Award may be subject to the Grantor's bondability guidelines, Grantee must comply with the interest requirements contained in Paragraph 4.7 and is not

permitted to retain interest earned on Grant Funds, as stated in Paragraph 26.1, unless specifically notified by Grantor that Grantee may do so.

ARTICLE XXXVIII BOND FUNDED GENERAL GRANT PROVISIONS

38.1. <u>Bond Funded General Grant Provisions</u>. It is the intent of the State that all or a portion of the costs of this Project will be paid or reimbursed from the proceeds of tax-exempt bonds subsequently issued by the State.



PUBLIC WORKS AND ENGINEERING DEPARTMENT 1111 Joseph J. Schwab Road Des Plaines, IL 60016 P: 847.391.5464 desplaines.org

MEMORANDUM

Date: May 22, 2024

To: Dorothy Wisniewski, City Manager

From: Becka Shipp, P.E., Assistant Director of Engineering

Cc: Timothy P. Oakley, P.E., CFM, Director of Public Works and Engineering 790

Subject: DCEO Grant Agreement 24-203429 – Infrastructure Improvements

Issue: The City of Des Plaines has received a \$120,000 grant from the Illinois Department of Commerce and Economic Opportunity (DCEO) for infrastructure improvements. It was determined this grant funding can be applied for improving the drainage system on various locations included on the 2024 Water Main Improvement Project.

Analysis: The 2024 Water Main Improvement Project will be upgrading the water facilities on the following streets: Ambleside Road (Lance Drive to Victoria Road), Ashland Avenue (Cora Street to Lee Street), Berry Lane (River Road to North End), Chestnut Street (Prospect Avenue to Howard Avenue), Howard Avenue (Chestnut Street to Mannheim Road), and Marshall Drive (Florian Drive to Algonquin Road). Several components of the existing drainage system at these locations are in poor condition and need to be repaired or replaced. These repairs can be completed as part of this project.

The drainage system repairs are included in the 2024 Water Main Improvement Project Contract A. This contract was awarded to DiMeo Brothers at the May 20, 2024 council meeting. The source of funding for the drainage system improvements is this grant (\$120,000).

Recommendation: We recommend approval of the intergovernmental grant agreement 24-203429 with the Illinois Department of Commerce and Economic Opportunity (DCEO).

Attachments: Resolution R-116-24 Exhibit A – Uniform Grant Budget Exhibit B – Intergovernmental Grant Agreement

CITY OF DES PLAINES

RESOLUTION R - 116 - 24

A RESOLUTION AUTHORIZING THE EXECUTION OF A GRANT BUDGET AND AGREEMENT WITH THE STATE OF ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY.

WHEREAS, Article VII, Section 10, of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations and corporations, in any manner not prohibited by law or ordinance; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, et seq., authorizes and encourages intergovernmental cooperation; and

WHEREAS, the City has been awarded a grant from the State of Illinois Department of Commerce and Economic Opportunity ("DCEO") in the amount of \$120,000.00 ("Grant") for drainage system repairs at various locations on the 2024 Water Main Improvement Contract A (collectively, the "Work"), which Work is eligible for the Grant; and

WHEREAS, in order to receive the Grant, the City must execute a Notice of Grant Award and Uniform Grant Budget ("*Grant Budget*") and an intergovernmental grant agreement with the DCEO ("*Agreement*"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve and authorize the execution of the Grant Budget and Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows;

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as the findings of the City Council.

<u>SECTION 2</u>: <u>APPROVAL OF GRANT BUDGET</u>. The City Council hereby approves the Grant Budget substantially in the form attached as **Exhibit A**, and in a final form approved by the General Counsel.

<u>SECTION 3</u>: <u>AUTHORIZATION TO EXECUTE GRANT BUDGET</u>. The City Council hereby authorizes the Mayor and the Director of Finance, if necessary and applicable, to execute and seal, on behalf of the City, the final Grant Budget.

<u>SECTION 4</u>: <u>APPROVAL OF AGREEMENT</u>. The City Council hereby approves the Agreement substantially in the form attached as **Exhibit B**, and in a final form approved by the General Counsel.

SECTION 5: <u>AUTHORIZATION TO EXECUTE AGREEMENT</u>. The City Council hereby authorizes the Mayor and the Assistant Director of Public Works and Engineering, if necessary and applicable, to execute and seal, on behalf of the City, the final Agreement.

SECTION 6: EFFECTIVE DATE. This Resolution will be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of ______, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

	UNIFORM GRANT BUDGET TEMPLATE	r template	Γ		
Agency: Illinois Department of Commerce and Economic Opportunity	nic Opportunity			State FY:	2024
Grantee: City of Des Plaines			DUNS Number:	743(74399668
NOFO Number:	CSFA Number:		Grant Number:	24-2	24-203429
CSFA Description:					
Section A: State of Illinois Funds	Summary	Detail			
Revenues					
State of Illinois Grant Amount Requested	\$120,000.00				
Budget Expenditure Categories					
1. Personnel (200.430)					
2. Fringe Benefits (200.431)					
3. Travel (200.474)					
4. Equipment (200.439)					
5. Supplies (200.94)					
6. Contractual/Subawards (200.318 and .92)					
7. Consultant (200.459)					
8. Construction	\$120,000.00				
1229 PLUMBING		\$120,000.00			
9. Occupancy (200.465)					
10. Research and Development (200.87)					
11. Telecommunications					
12. Training and Education (200.472)					
13. Direct Administrative Costs (200.413)					
14. Miscellaneous Costs					
15. Grant Exclusive Line Item(s)					
16. Total Direct Costs (add lines 1-15)	\$120,000.00	\$120,000.00			
17. Total Indirect Costs (200.414)					
Rate: %					
Base:					
18. Total Costs State Grant Funds (Lines 16 and 17)	\$120,000.00	\$120,000.00			

Exhibit A

State of Illinois

Exhibit A

Grantee: City of Des Plaines

0

NOFO Number:

. .

		Gr	Grant Number: 24-203429
By signing this report, I certif false, fictitious or fraudulent award(s).	By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and that any false, fictitious or fraudulent information or the omission of any material fact could result in the immediate termination of my grant award(s).	that the report is true, complet rial fact could result in the imme	e and accurate and that any ediate termination of my grant
Institution/Organization:	City of Des Plaines	Institution/Organization:	City of Des Plaines
Signature:		Signature:	
Printed Name:	Dorothy Wisniewski	Printed Name:	Andrew Goczkowski
Title:	City Manager	Title:	Mayor
Phone:	(847) 391-5317	Phone:	(847) 391-5301
Date:		Date:	
Note: The State Awarding Agen	Note: The State Awarding Agency may change required signers based on the grantee's organizational structure. The required signers must have the	grantee's organizational structure.	The required signers must have the

ω 2 ພ authority to enter into contractual agreements on the behalf of the organization.

Exhibit A

Grantee: City of Des Plaines

0

NOFO Number:



GRANT AGREEMENT BETWEEN THE STATE OF ILLINOIS, DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY AND City of Des Plaines

The parties to this Grant Agreement (Agreement) are the State of Illinois (State), acting through the undersigned agency (Grantor) and City of Des Plaines (Grantee) (collectively, the "Parties" and individually, a "Party"). The Agreement, consisting of the signature page, the parts listed below, and any additional exhibits or attachments referenced in this Agreement, constitute the entire agreement between the Parties. No promises, terms, or conditions not recited, incorporated or referenced herein, including prior agreements or oral discussions, are binding upon either Grantee or Grantor.

PART ONE - The Uniform Terms

Article I	Definitions
Article II	Award Information
Article III	Grantee Certifications and Representations
Article IV	Payment Requirements
Article V	Scope of Award Activities/Purpose of Award
Article VI	Budget
Article VII	Allowable Costs
Article VIII	Lobbying
Article IX	Maintenance and Accessibility of Records; Monitoring
Article X	Financial Reporting Requirements
Article XI	Performance Reporting Requirements
Article XII	Audit Requirements
Article XIII	Termination; Suspension; Non-compliance
Article XIV	Subcontracts/Subawards
Article XV	Notice of Change
Article XVI	Structural Reorganization and Reconstitution of Board Membership
Article XVII	Conflict of Interest
Article XVIII	Equipment or Property
Article XIX	Promotional Materials; Prior Notification
Article XX	Insurance
Article XXI	Lawsuits and Indemnification
Article XXII	Miscellaneous
Exhibit A	Project Description
Exhibit B	Deliverables or Milestones
Exhibit C	Contact Information
Exhibit D	Performance Measures and Standards
Exhibit E	Specific Conditions

PART TWO – Grantor-Specific Terms

PART THREE – Project-Specific Terms

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 1 of 42 The Parties or their duly authorized representatives hereby execute this Agreement.

ILLINOIS DEPARTMENT OF COMMERCE AND CITY OF DES PLAINES ECONOMIC OPPORTUNITY

By:	By:	
Signature of Kristin A. Richards, Director	Signature of Auth	norized Representative
Date:	Date:	
_		Andrew Goczkowski
By: Signature of Designee	Printed Title:	Mayor
Signature of Designee	Printed fille:	Mayor
Date:	Email:	agoczkowski@desplaines.org
Printed Name:		
Printed Title:		
	Designee	
Ву:	•	
Signature of Second Grantor Approver, if a	applicable Signature of Sec	ond Grantee Approver, if applicable
Date:	Date:	
Printed Name:	Printed Name:	
Printed Title:	Printed Title:	
Second Grante	or Approver	Second Grantee Approver
		(optional at Grantee's discretion)
By:		
Signature of Third Grantor Approver, if ap	plicable	
Date:		
Printed Name:		
Printed Title:		
Third Grant	or Approver	

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 2 of 42

PART ONE – THE UNIFORM TERMS

ARTICLE I DEFINITIONS

1.1. <u>Definitions</u>. Capitalized words and phrases used in this Agreement have the meanings stated in 2 CFR 200.1 unless otherwise stated below.

"Allowable Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Award" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Budget" has the same meaning as in 44 III. Admin. Code 7000.30.

"Catalog of State Financial Assistance" or "CSFA" has the same meaning as in 44 III. Admin. Code 7000.30.

"Close-out Report" means a report from the Grantee allowing Grantor to determine whether all applicable administrative actions and required work have been completed, and therefore closeout actions can commence.

"Conflict of Interest" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Cooperative Research and Development Agreement" has the same meaning as in 15 USC 3710a.

"Direct Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Financial Assistance" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"GATU" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Grant Agreement" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Grant Funds" means the Financial Assistance made available to Grantee through this Agreement.

"Grantee Portal" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Indirect Costs" has the same meaning as in 44 III. Admin. Code 7000.30.

"Indirect Cost Rate" means a device for determining in a reasonable manner the proportion of Indirect Costs each Program should bear. It is a ratio (expressed as a percentage) of the Indirect Costs to a Direct Cost base. If reimbursement of Indirect Costs is allowable under an Award, Grantor will not reimburse those Indirect Costs unless Grantee has established an Indirect Cost Rate covering the applicable activities and period of time, unless Indirect Costs are reimbursed at a fixed rate.

"Indirect Cost Rate Proposal" has the same meaning as in 44 III. Admin. Code 7000.30.

"Obligations" has the same meaning as in 44 III. Admin. Code 7000.30.

"Period of Performance" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Prior Approval" has the same meaning as in 44 Ill. Admin. Code 7000.30.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 3 of 42 "Profit" means an entity's total revenue less its operating expenses, interest paid, depreciation, and taxes. "Profit" is synonymous with the term "net revenue."

"Program" means the services to be provided pursuant to this Agreement. "Program" is used interchangeably with "Project."

"Program Costs" means all Allowable Costs incurred by Grantee and the value of the contributions made by third parties in accomplishing the objectives of the Award during the Term of this Agreement.

"Related Parties" has the meaning set forth in Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 850-10-20.

"SAM" means the federal System for Award Management (SAM), the federal repository into which an entity must provide information required for the conduct of business as a recipient.

"State Grantee Compliance Enforcement System" means the statewide framework for State agencies to manage occurrences of non-compliance with Award requirements.

"State-issued Award" means the assistance that a grantee receives directly from a State agency. The funding source of the State-issued Award can be federal pass-through, State or a combination thereof. "State-issued Award" does not include the following:

- contracts issued pursuant to the Illinois Procurement Code that a State agency uses to buy goods or services from a contractor or a contract to operate State government-owned, contractor-operated facilities;
- agreements that meet the definition of "contract" under 2 CFR 200.1 and 2 CFR 200.331, which a State
 agency uses to procure goods or services but are exempt from the Illinois Procurement Code due to an
 exemption listed under 30 ILCS 500/1-10, or pursuant to a disaster proclamation, executive order, or any
 other exemption permitted by law;
- amounts received for services rendered to an individual;
- Cooperative Research and Development Agreements;
- an agreement that provides only direct cash assistance to an individual;
- a subsidy;
- a loan;
- a loan guarantee; or
- insurance.

"Illinois Stop Payment List" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Unallowable Cost" has the same meaning as in 44 Ill. Admin. Code 7000.30.

"Unique Entity Identifier" or "UEI" has the same meaning as in 44 III. Admin. Code 7000.30.

ARTICLE II AWARD INFORMATION

2.1. <u>Term</u>. This Agreement is effective on **05/01/2024** and expires on **04/30/2026** (the Term), unless terminated pursuant to this Agreement.

2.2. <u>Amount of Agreement</u>. Grant Funds must not exceed **\$120,000.00**, of which **\$0.00** are federal funds. Grantee accepts Grantor's payment as specified in this ARTICLE.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 4 of 42 2.3. <u>Payment</u>. Payment will be made as follows (see additional payment requirements in ARTICLE IV; additional payment provisions specific to this Award may be included in <u>PART TWO</u> or <u>PART THREE</u>):

The Award amount listed in Paragraph 2.2 is not a guarantee of payment, and Grantee's receipt of Grant Funds is contingent upon all terms and conditions of this Agreement.

Reimbursement

Payments to the Grantee are subject to the Grantee's submission and certification of eligible costs and any documentation as required by the Grantor. Payment shall be initiated upon the Grantor's approval of eligible costs and cash amount requested for reimbursement of those costs.

2.4. <u>Award Identification Numbers</u>. If applicable, the Federal Award Identification Number (FAIN) is N/A, the federal awarding agency is N/A, and the Federal Award date is N/A. If applicable, the Assistance Listing Program Title is N/A and Assistance Listing Number is N/A. The Catalog of State Financial Assistance (CSFA) Number is 420-00-1758 and the CSFA Name is Site Improvements. If applicable, the State Award Identification Number (SAIN) is 1758-50532.

ARTICLE III GRANTEE CERTIFICATIONS AND REPRESENTATIONS

3.1. <u>Registration Certification</u>. Grantee certifies that: (i) it is registered with SAM and **DAS9KV9SMXV3** is Grantee's correct UEI; (ii) it is in good standing with the Illinois Secretary of State, if applicable; and (iii) Grantee has successfully completed the annual registration and prequalification through the Grantee Portal.

Grantee must remain current with these registrations and requirements. If Grantee's status with regard to any of these requirements changes, or the certifications made in and information provided in the uniform grant application changes, Grantee must notify Grantor in accordance with ARTICLE XV.

3.2. <u>Tax Identification Certification</u>. Grantee certifies that: **366005849** is Grantee's correct federal employer identification number (FEIN) or Social Security Number. Grantee further certifies, if applicable: (a) that Grantee is not subject to backup withholding because (i) Grantee is exempt from backup withholding, or (ii) Grantee has not been notified by the Internal Revenue Service (IRS) that Grantee is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Grantee that Grantee is no longer subject to backup withholding; and (b) Grantee is a U.S. citizen or other U.S. person. Grantee is doing business as a (check one):

	Individual	Pharmacy-Non Corporate
	Sole Proprietorship	Pharmacy/Funeral Home/Cemetery Corp.
	Partnership	Tax Exempt
	Corporation (includes Not For Profit)	Limited Liability Company (select applicable tax
	Medical Corporation	classification)
Х	Governmental Unit	P = partnership
	Estate or Trust	C = corporation

If Grantee has not received a payment from the State of Illinois in the last two years, Grantee must submit a W-9 tax form with this Agreement.

3.3. <u>Compliance with Uniform Grant Rules</u>. Grantee certifies that it must adhere to the applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which are published in Title 2, Part 200 of the Code of Federal Regulations (2 CFR Part 200) and are incorporated herein by reference. 44 III. Admin. Code 7000.40(c)(1)(A). The requirements of 2 CFR Part 200 apply to the Grant Funds

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 5 of 42

Exhibit B

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awarded through this Agreement, regardless of whether the original source of the funds is State or federal, unless an exception is noted in federal or State statutes or regulations. 30 ILCS 708/5(b).

3.4. <u>Representations and Use of Funds</u>. Grantee certifies under oath that (1) all representations made in this Agreement are true and correct and (2) all Grant Funds awarded pursuant to this Agreement must be used only for the purpose(s) described herein. Grantee acknowledges that the Award is made solely upon this certification and that any false statements, misrepresentations, or material omissions will be the basis for immediate termination of this Agreement and repayment of all Grant Funds.

3.5. <u>Specific Certifications</u>. Grantee is responsible for compliance with the enumerated certifications in this Paragraph to the extent that the certifications apply to Grantee.

(a) **Bribery.** Grantee certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, nor made an admission of guilt of such conduct which is a matter of record.

(b) **Bid Rigging.** Grantee certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Paragraph 33E-3 or 33E-4 of the Criminal Code of 2012 (720 ILCS 5/33E-3 or 720 ILCS 5/33E-4, respectively).

(c) **Debt to State.** Grantee certifies that neither it, nor its affiliate(s), is/are barred from receiving an Award because Grantee, or its affiliate(s), is/are delinquent in the payment of any debt to the State, unless Grantee, or its affiliate(s), has/have entered into a deferred payment plan to pay off the debt.

(d) **International Boycott.** Grantee certifies that neither it nor any substantially owned affiliated company is participating or will participate in an international boycott in violation of the provision of the Anti-Boycott Act of 2018, Part II of the Export Control Reform Act of 2018 (50 USC 4841 through 4843), and the anti-boycott provisions set forth in Part 760 of the federal Export Administration Regulations (15 CFR Parts 730 through 774).

(e) **Discriminatory Club Dues or Fees.** Grantee certifies that it is not prohibited from receiving an Award because it pays dues or fees on behalf of its employees or agents, or subsidizes or otherwise reimburses employees or agents for payment of their dues or fees to any club which unlawfully discriminates (775 ILCS 25/2).

(f) **Pro-Children Act.** Grantee certifies that it is in compliance with the Pro-Children Act of 2001 in that it prohibits smoking in any portion of its facility used for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18) (except such portions of the facilities which are used for inpatient substance abuse treatment) (20 USC 7181-7184).

(g) **Drug-Free Workplace.** If Grantee is not an individual, Grantee certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act. 30 ILCS 580/3. If Grantee is an individual and this Agreement is valued at more than \$5,000, Grantee certifies it will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the Agreement. 30 ILCS 580/4. Grantee further certifies that if it is a recipient of federal pass-through funds, it is in compliance with the government-wide requirements for a drug-free workplace as set forth in 41 USC 8103.

(h) **Motor Voter Law.** Grantee certifies that it is in full compliance with the terms and provisions of the National Voter Registration Act of 1993 (52 USC 20501 et seq.).

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 6 of 42 (i) **Clean Air Act and Clean Water Act.** Grantee certifies that it is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.).

(j) **Debarment.** Grantee certifies that it is not debarred, suspended, proposed for debarment or permanent inclusion on the Illinois Stop Payment List, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency (2 CFR 200.205(a)), or by the State (30 ILCS 708/25(6)(G)).

(k) **Non-procurement Debarment and Suspension.** Grantee certifies that it is in compliance with Subpart C of 2 CFR Part 180 as supplemented by 2 CFR Part 376, Subpart C.

(I) Health Insurance Portability and Accountability Act. Grantee certifies that it is in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law No. 104-191, 45 CFR Parts 160, 162 and 164, and the Social Security Act, 42 USC 1320d-2 through 1320d-7), in that it may not use or disclose protected health information other than as permitted or required by law and agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Grantee must maintain, for a minimum of six (6) years, all protected health information.

(m) Criminal Convictions. Grantee certifies that:

(i) Neither it nor a managerial agent of Grantee (for non-governmental grantees only, this includes any officer, director or partner of Grantee) has been convicted of a felony under the Sarbanes-Oxley Act of 2002, nor a Class 3 or Class 2 felony under Illinois Securities Law of 1953, or that at least five (5) years have passed since the date of the conviction; and

(ii) It must disclose to Grantor all violations of criminal law involving fraud, bribery or gratuity violations potentially affecting this Award. Failure to disclose may result in remedial actions as stated in the Grant Accountability and Transparency Act. 30 ILCS 708/40. Additionally, if Grantee receives over \$10 million in total federal Financial Assistance, during the period of this Award, Grantee must maintain the currency of information reported to SAM regarding civil, criminal or administrative proceedings as required by 2 CFR 200.113 and Appendix XII of 2 CFR Part 200, and 30 ILCS 708/40.

(n) **Federal Funding Accountability and Transparency Act of 2006 (FFATA)**. Grantee certifies that it is in compliance with the terms and requirements of 31 USC 6101 with respect to Federal Awards greater than or equal to \$30,000. A FFATA subaward report must be filed by the end of the month following the month in which the award was made.

(o) **Illinois Works Review Panel.** For Awards made for public works projects, as defined in the Illinois Works Jobs Program Act, Grantee certifies that it and any contractor(s) or subcontractor(s) that performs work using funds from this Award, must, upon reasonable notice, appear before and respond to requests for information from the Illinois Works Review Panel. 30 ILCS 559/20-25(d).

(p) Anti-Discrimination. Grantee certifies that its employees and subcontractors under subcontract made pursuant to this Agreement, must comply with all applicable provisions of State and federal laws and regulations pertaining to nondiscrimination, sexual harassment and equal employment opportunity including, but not limited to: Illinois Human Rights Act (775 ILCS 5/1-101 et seq.), including, without limitation, 44 Ill. Admin. Code 750- Appendix A, which is incorporated herein; Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.); Civil Rights Act of 1964 (as amended) (42 USC 2000a - 2000h-6); Section 504 of the Rehabilitation Act of 1973 (29 USC 794); Americans with Disabilities Act of 1990 (as amended) (42 USC 12101 et seq.); and the Age Discrimination Act of 1975 (42 USC 6101 et seq.).

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 7 of 42 (q) Internal Revenue Code and Illinois Income Tax Act. Grantee certifies that it complies with all provisions of the federal Internal Revenue Code (26 USC 1), the Illinois Income Tax Act (35 ILCS 5), and all regulations and rules promulgated thereunder, including withholding provisions and timely deposits of employee taxes and unemployment insurance taxes.

ARTICLE IV PAYMENT REQUIREMENTS

4.1. <u>Availability of Appropriation; Sufficiency of Funds</u>. This Agreement is contingent upon and subject to the availability of sufficient funds. Grantor may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient funds for this Agreement have not been appropriated or otherwise made available to Grantor by the State or the federal funding source, (ii) the Governor or Grantor reserves funds, or (iii) the Governor or Grantor determines that funds will not or may not be available for payment. Grantor must provide notice, in writing, to Grantee of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Paragraph will be effective upon the date of the written notice unless otherwise indicated.

4.2. <u>Pre-Award Costs</u>. Pre-award costs are not permitted unless specifically authorized by Grantor in **Exhibit A**, **PART TWO** or **PART THREE** of this Agreement. If they are authorized, pre-award costs must be charged to the initial Budget Period of the Award, unless otherwise specified by Grantor. 2 CFR 200.458.

4.3. <u>Return of Grant Funds</u>. Grantee must liquidate all Obligations incurred under the Award within forty-five (45) days of the end of the Period of Performance, or in the case of capital improvement Awards, within forty-five (45) days of the end of the time period the Grant Funds are available for expenditure or obligation, unless Grantor permits a longer period in **PART TWO** OR **PART THREE**.

4.4. <u>Cash Management Improvement Act of 1990</u>. Unless notified otherwise in <u>PART TWO</u> or <u>PART</u> <u>THREE</u>, Grantee must manage federal funds received under this Agreement in accordance with the Cash Management Improvement Act of 1990 (31 USC 6501 et seq.) and any other applicable federal laws or regulations. 2 CFR 200.305; 44 III. Admin. Code 7000.120.

4.5. <u>Payments to Third Parties.</u> Grantor will have no liability to Grantee when Grantor acts in good faith to redirect all or a portion of any Grantee payment to a third party. Grantor will be deemed to have acted in good faith when it is in possession of information that indicates Grantee authorized Grantor to intercept or redirect payments to a third party or when so ordered by a court of competent jurisdiction.

4.6. <u>Modifications to Estimated Amount</u>. If the Agreement amount is established on an estimated basis, then it may be increased by mutual agreement at any time during the Term. Grantor may decrease the estimated amount of this Agreement at any time during the Term if (i) Grantor believes Grantee will not use the funds during the Term, (ii) Grantor believes Grantee has used Grant Funds in a manner that was not authorized by this Agreement, (iii) sufficient funds for this Agreement have not been appropriated or otherwise made available to Grantor by the State or the federal funding source, (iv) the Governor or Grantor reserves funds, or (v) the Governor or Grantor determines that funds will or may not be available for payment. Grantee will be notified, in writing, of any adjustment of the estimated amount of this Agreement. In the event of such reduction, services provided by Grantee under <u>Exhibit A</u> may be reduced accordingly. Grantor must pay Grantee for work satisfactorily performed prior to the date of the notice regarding adjustment. 2 CFR 200.308.

4.7. <u>Interest</u>.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 8 of 42 (a) All interest earned on Grant Funds held by a Grantee will be treated in accordance with 2 CFR 200.305(b)(9), unless otherwise provided in <u>PART TWO</u> or <u>PART THREE</u>. Grantee must remit annually any amount due in accordance with 2 CFR 200.305(b)(9) or to Grantor, as applicable.

(b) Grant Funds must be placed in an insured account, whenever possible, that bears interest, unless exempted under 2 CFR 200.305(b)(8).

4.8. <u>Timely Billing Required</u>. Grantee must submit any payment request to Grantor within fifteen (15) days of the end of the quarter, unless another billing schedule is specified in ARTICLE II, <u>PART TWO</u>, or <u>PART</u> <u>THREE</u>. Failure to submit such payment request timely will render the amounts billed Unallowable Costs which Grantor cannot reimburse. In the event that Grantee is unable, for good cause, to submit its payment request timely, Grantee shall timely notify Grantor and may request an extension of time to submit the payment request. Grantor's approval of Grantee's request for an extension shall not be unreasonably withheld.

4.9. <u>Certification</u>. Pursuant to 2 CFR 200.415, each invoice and report submitted by Grantee (or subrecipient) must contain the following certification by an official authorized to legally bind Grantee (or subrecipient):

By signing this report [or payment request or both], I certify to the best of my knowledge and belief that the report [or payment request] is true, complete, and accurate; that the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the State or federal pass-through award; and that supporting documentation has been submitted as required by the grant agreement. I acknowledge that approval for any other expenditure described herein is considered conditional subject to further review and verification in accordance with the monitoring and records retention provisions of the grant agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812; 30 ILCS 708/120).

ARTICLE V SCOPE OF AWARD ACTIVITIES/PURPOSE OF AWARD

5.1. <u>Scope of Award Activities/Purpose of Award</u>. Grantee must perform as described in this Agreement, including as described in <u>Exhibit A</u> (Project Description), <u>Exhibit B</u> (Deliverables or Milestones), and <u>Exhibit D</u> (Performance Measures and Standards), as applicable. Grantee must further comply with all terms and conditions set forth in the Notice of State Award (44 III. Admin. Code 7000.360) which is incorporated herein by reference. All Grantor-specific provisions and programmatic reporting required under this Agreement are described in <u>PART TWO</u> (Grantor-Specific Terms). All Project-specific provisions and reporting required under this Agreement are described in <u>PART THREE</u> (Project-Specific Terms).

5.2. <u>Scope Revisions</u>. Grantee must obtain Prior Approval from Grantor whenever a scope revision is necessary for one or more of the reasons enumerated in 44 III. Admin. Code 7000.370(b)(2). All requests for scope revisions that require Grantor approval must be signed by Grantee's authorized representative and submitted to Grantor for approval. Expenditure of funds under a requested revision is prohibited and will not be reimbursed if expended before Grantor gives written approval. 2 CFR 200.308.

5.3. <u>Specific Conditions</u>. If applicable, specific conditions required after a risk assessment are included in **Exhibit E**. Grantee must adhere to the specific conditions listed therein. 44 III. Admin. Code 7000.340(e).

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ARTICLE VI BUDGET

6.1. <u>Budget</u>. The Budget submitted by Grantee at application, or a revised Budget subsequently submitted and approved by Grantor, is considered final and is incorporated herein by reference.

6.2. <u>Budget Revisions</u>. Grantee must obtain Prior Approval, whether mandated or discretionary, from Grantor whenever a Budget revision, is necessary for one or more of the reasons enumerated in 44 III. Admin. Code 7000.370(b). All requests for Budget revisions that require Grantor approval must be signed by Grantee's authorized representative and submitted to Grantor for approval. Expenditure of funds under a requested revision is prohibited and will not be reimbursed if expended before Grantor gives written approval.

6.3. <u>Notification</u>. Within thirty (30) calendar days from the date of receipt of the request for Budget revisions, Grantor will review the request and notify Grantee whether the Budget revision has been approved, denied, or the date upon which a decision will be reached. 44 III. Admin. Code 7000.370(b)(7).

ARTICLE VII ALLOWABLE COSTS

7.1. <u>Allowability of Costs; Cost Allocation Methods</u>. The allowability of costs and cost allocation methods for work performed under this Agreement will be determined in accordance with 2 CFR Part 200 Subpart E and Appendices III, IV, V, and VII.

7.2. Indirect Cost Rate Submission.

(a) All grantees, except for Local Education Agencies (as defined in 34 CFR 77.1), must make an Indirect Cost Rate election in the Grantee Portal, even grantees that do not charge or expect to charge Indirect Costs. 44 III. Admin. Code 7000.420(e).

(i) Waived and de minimis Indirect Cost Rate elections will remain in effect until Grantee elects a different option.

(b) Grantee must submit an Indirect Cost Rate Proposal in accordance with federal and State regulations, in a format prescribed by Grantor. For grantees who have never negotiated an Indirect Cost Rate before, the Indirect Cost Rate Proposal must be submitted for approval no later than three months after the effective date of the Award. For grantees who have previously negotiated an Indirect Cost Rate, the Indirect Cost Rate Proposal must be submitted for approval within 180 days of Grantee's fiscal year end, as dictated in the applicable appendices, such as:

(i) Appendix VII to 2 CFR Part 200 governs Indirect Cost Rate Proposals for state and Local Governments and Indian Tribes,

(ii) Appendix III to 2 CFR Part 200 governs Indirect Cost Rate Proposals for public and private institutions of higher education,

(iii) Appendix IV to 2 CFR Part 200 governs Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, and

(iv) Appendix V to 2 CFR Part 200 governs state/Local Governmentwide Central Service Cost Allocation Plans.

(c) A grantee who has a current, applicable rate negotiated by a cognizant federal agency must provide to Grantor a copy of its Indirect Cost Rate acceptance letter from the federal government and a copy of all documentation regarding the allocation methodology for costs used to negotiate that rate, e.g., without limitation, the cost policy statement or disclosure narrative statement. Grantor will accept that Indirect Cost Rate, up to any statutory, rule-based or programmatic limit.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 10 of 42 (d) A grantee who does not have a current negotiated rate, may elect to charge a de minimis rate of 10% of Modified Total Direct Cost which may be used indefinitely. No documentation is required to justify the 10% de minimis Indirect Cost Rate. 2 CFR 200.414(f).

7.3. <u>Transfer of Costs</u>. Cost transfers between Grants, whether as a means to compensate for cost overruns or for other reasons, are unallowable. 2 CFR 200.451.

7.4. <u>Commercial Organization Cost Principles</u>. The federal cost principles and procedures for cost analysis and the determination, negotiation and allowance of costs that apply to commercial organizations are set forth in 48 CFR Part 31.

7.5. <u>Financial Management Standards</u>. The financial management systems of Grantee must meet the following standards:

(a) Accounting System. Grantee organizations must have an accounting system that provides accurate, current, and complete disclosure of all financial transactions related to each state- and federally-funded Program. Accounting records must contain information pertaining to State and federal pass-through awards, authorizations, Obligations, unobligated balances, assets, outlays, and income. These records must be maintained on a current basis and balanced at least quarterly. Cash contributions to the Program from third parties must be accounted for in the general ledger with other Grant Funds. Third party in-kind (non-cash) contributions are not required to be recorded in the general ledger, but must be under accounting control, possibly through the use of a memorandum ledger. To comply with 2 CFR 200.305(b)(7)(i) and 30 ILCS 708/97, Grantee must use reasonable efforts to ensure that funding streams are delineated within Grantee's accounting system. 2 CFR 200.302.

(b) **Source Documentation**. Accounting records must be supported by such source documentation as canceled checks, bank statements, invoices, paid bills, donor letters, time and attendance records, activity reports, travel reports, contractual and consultant agreements, and subaward documentation. All supporting documentation must be clearly identified with the Award and general ledger accounts which are to be charged or credited.

(i) The documentation standards for salary charges to Grants are prescribed by 2 CFR 200.430, and in the cost principles applicable to the Grantee's organization.

(ii) If records do not meet the standards in 2 CFR 200.430, then Grantor may notify Grantee in **PART TWO**, **PART THREE** or **Exhibit E** of the requirement to submit personnel activity reports. 2 CFR 200.430(i)(8). Personnel activity reports must account on an after-the-fact basis for one hundred percent (100%) of the employee's actual time, separately indicating the time spent on the Award, other grants or projects, vacation or sick leave, and administrative time, if applicable. The reports must be signed by the employee, approved by the appropriate official, and coincide with a pay period. These time records must be used to record the distribution of salary costs to the appropriate accounts no less frequently than quarterly.

(iii) Formal agreements with independent contractors, such as consultants, must include a description of the services to be performed, the period of performance, the fee and method of payment, an itemization of travel and other costs which are chargeable to the agreement, and the signatures of both the contractor and an appropriate official of Grantee.

(iv) If third party in-kind (non-cash) contributions are used for Award purposes, the valuation of these contributions must be supported with adequate documentation.

(c) **Internal Control**. Grantee must maintain effective control and accountability for all cash, real and personal property, and other assets. Grantee must adequately safeguard all such property and must provide assurance that it is used solely for authorized purposes. Grantee must also have systems in place that provide reasonable assurance that the information is accurate, allowable, and compliant with the terms and conditions of this Agreement. 2 CFR 200.303.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 11 of 42 (d) **Budget Control**. Grantee must maintain records of expenditures for each Award by the cost categories of the approved Budget (including Indirect Costs that are charged to the Award), and actual expenditures are to be compared with budgeted amounts at least quarterly.

(e) **Cash Management**. Requests for advance payment must be limited to Grantee's immediate cash needs. Grantee must have written procedures to minimize the time elapsing between the receipt and the disbursement of Grant Funds to avoid having excess funds on hand. 2 CFR 200.305.

7.6. <u>Profits</u>. It is not permitted for any person or entity to earn a Profit from an Award. See, e.g., 2 CFR 200.400(g); see also 30 ILCS 708/60(a)(7).

7.7. <u>Management of Program Income</u>. Grantee is encouraged to earn income to defray Program Costs where appropriate, subject to 2 CFR 200.307.

ARTICLE VIII LOBBYING

8.1. Improper Influence. Grantee certifies that it will not use and has not used Grant Funds to influence or attempt to influence an officer or employee of any government agency or a member or employee of the State or federal legislature in connection with the awarding of any agreement, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any agreement, grant, loan or cooperative agreement. Additionally, Grantee certifies that it has filed the required certification under the Byrd Anti-Lobbying Amendment (31 USC 1352), if applicable.

8.2. <u>Federal Form LLL</u>. If any federal funds, other than federally-appropriated funds, were paid or will be paid to any person for influencing or attempting to influence any of the above persons in connection with this Agreement, the undersigned must also complete and submit Federal Form LLL, Disclosure of Lobbying Activities Form, in accordance with its instructions.

8.3. <u>Lobbying Costs</u>. Grantee certifies that it is in compliance with the restrictions on lobbying set forth in 2 CFR 200.450. For any Indirect Costs associated with this Agreement, total lobbying costs must be separately identified in the Program Budget, and thereafter treated as other Unallowable Costs.

8.4. <u>Procurement Lobbying</u>. Grantee warrants and certifies that it and, to the best of its knowledge, its subrecipients have complied and will comply with Illinois Executive Order No. 1 (2007) (EO 1-2007). EO 1-2007 generally prohibits grantees and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.

8.5. <u>Subawards</u>. Grantee must include the language of this ARTICLE in the award documents for any subawards made pursuant to this Award at all tiers. All subrecipients are also subject to certification and disclosure. Pursuant to Appendix II(I) to 2 CFR Part 200, Grantee must forward all disclosures by contractors regarding this certification to Grantor.

8.6. <u>Certification</u>. This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction, pursuant to 31 USC 1352. Any person who fails to file the required certifications will be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

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ARTICLE IX MAINTENANCE AND ACCESSIBILITY OF RECORDS; MONITORING

9.1. <u>Records Retention</u>. Grantee must maintain for three (3) years from the date of submission of the final expenditure report, adequate books, all financial records and, supporting documents, statistical records, and all other records pertinent to this Award, adequate to comply with 2 CFR 200.334, unless a different retention period is specified in 2 CFR 200.334, 44 III. Admin. Code 7000.430(a) and (b) or <u>PART TWO</u> or <u>PART THREE</u>. If any litigation, claim or audit is started before the expiration of the retention period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action taken.

9.2. <u>Accessibility of Records</u>. Grantee, in compliance with 2 CFR 200.337 and 44 III. Admin. Code 7000.430(f), must make books, records, related papers, supporting documentation and personnel relevant to this Agreement available to authorized Grantor representatives, the Illinois Auditor General, Illinois Attorney General, any Executive Inspector General, Grantor's Inspector General, federal authorities, any person identified in 2 CFR 200.337, and any other person as may be authorized by Grantor (including auditors), by the State of Illinois or by federal statute. Grantee must cooperate fully in any such audit or inquiry.

9.3. <u>Failure to Maintain Books and Records</u>. Failure to maintain books, records and supporting documentation, as described in this ARTICLE, establishes a presumption in favor of the State for the recovery of any Grant Funds paid by the State under this Agreement for which adequate books, records and supporting documentation are not available to support disbursement.

9.4. <u>Monitoring and Access to Information</u>. Grantee must monitor its activities to assure compliance with applicable state and federal requirements and to assure its performance expectations are being achieved. Grantor will monitor the activities of Grantee to assure compliance with all requirements and performance expectations of the Award. Grantee must timely submit all financial and performance reports, and must supply, upon Grantor's request, documents and information relevant to the Award. Grantor may make site visits as warranted by Program needs. 2 CFR 200.329; 200.332. Additional monitoring requirements may be in **PART TWO** or **PART THREE**.

ARTICLE X FINANCIAL REPORTING REQUIREMENTS

10.1. <u>Required Periodic Financial Reports</u>. Grantee must submit financial reports as requested and in the format required by Grantor no later than the dues date(s) specified in <u>PART TWO</u> or <u>PART THREE</u>. Grantee must submit quarterly reports with Grantor describing the expenditure(s) of the funds related thereto, unless more frequent reporting is required by the Grantee due to the funding source or pursuant to specific award conditions. 2 CFR 200.208. Any report required by 30 ILCS 708/125 may be detailed in <u>PART TWO</u> or <u>PART THREE</u>.

10.2. <u>Financial Close-out Report</u>.

(a) Grantee must submit a financial Close-out Report, in the format required by Grantor, by the due date specified in **PART TWO** or **PART THREE**, which must be no later than sixty (60) calendar days following the end of the Period of Performance for this Agreement or Agreement termination. The format of this financial Close-out Report must follow a format prescribed by Grantor. 2 CFR 200.344; 44 III. Admin. Code 7000.440(b).

(b) If an audit or review of Grantee occurs and results in adjustments after Grantee submits a Close-out Report, Grantee must submit a new financial Close-out Report based on audit adjustments, and immediately submit a refund to Grantor, if applicable. 2 CFR 200.345; 44 III. Admin. Code 7000.450.

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10.3. Effect of Failure to Comply. Failure to comply with the reporting requirements in this Agreement may cause a delay or suspension of funding or require the return of improper payments or Unallowable Costs, and will be considered a material breach of this Agreement. Grantee's failure to comply with ARTICLE X, ARTICLE XI, or ARTICLE XVII will be considered prima facie evidence of a breach and may be admitted as such, without further proof, into evidence in an administrative proceeding before Grantor, or in any other legal proceeding. Grantee should refer to the State Grantee Compliance Enforcement System for policy and consequences for failure to comply. 44 III. Admin. Code 7000.80.

ARTICLE XI PERFORMANCE REPORTING REQUIREMENTS

11.1. <u>Required Periodic Performance Reports</u>. Grantee must submit performance reports as requested and in the format required by Grantor no later than the due date(s) specified in <u>PART TWO</u> or <u>PART THREE</u>. 44 III. Admin. Code 7000.410. Grantee must report to Grantor on the performance measures listed in <u>Exhibit D</u>, <u>PART</u> <u>TWO</u> or <u>PART THREE</u> at the intervals specified by Grantor, which must be no less frequent than annually and no more frequent than quarterly, unless otherwise specified in <u>PART TWO</u>, <u>PART THREE</u>, or <u>Exhibit E</u> pursuant to specific award conditions. For certain construction-related Awards, such reports may be exempted as identified in <u>PART TWO</u> or <u>PART THREE</u>. 2 CFR 200.329.

11.2. <u>Performance Close-out Report</u>. Grantee must submit a performance Close-out Report, in the format required by Grantor by the due date specified in <u>PART TWO</u> or <u>PART THREE</u>, which must be no later than 60 calendar days following the end of the Period of Performance or Agreement termination. 2 CFR 200.344; 44 III. Admin. Code 7000.440(b).

11.3. <u>Content of Performance Reports</u>. Pursuant to 2 CFR 200.329(b) and (c), all performance reports must relate the financial data and accomplishments to the performance goals and objectives of this Award and also include the following: a comparison of actual accomplishments to the objectives of the Award established for the period; where the accomplishments can be quantified, a computation of the cost and demonstration of cost effective practices (e.g., through unit cost data); performance trend data and analysis if required; and reasons why established goals were not met, if appropriate. Additional content and format guidelines for the performance reports will be determined by Grantor contingent on the Award's statutory, regulatory and administrative requirements, and are included in **PART TWO** or **PART THREE** of this Agreement.

ARTICLE XII AUDIT REQUIREMENTS

12.1. <u>Audits</u>. Grantee is subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507), Subpart F of 2 CFR Part 200, and the audit rules and policies set forth by the Governor's Office of Management and Budget. 30 ILCS 708/65(c); 44 Ill. Admin. Code 7000.90.

12.2. <u>Consolidated Year-End Financial Reports (CYEFR)</u>. All grantees must complete and submit a CYEFR through the Grantee Portal, except those exempted by federal or State statute or regulation, as set forth in **PART TWO** or **PART THREE**. The CYEFR is a required schedule in Grantee's audit report if Grantee is required to complete and submit an audit report as set forth herein.

(a) Grantee's CYEFR must cover the same period as the audited financial statements, if required, and must be submitted in accordance with the audit schedule at 44 III. Admin. Code 7000.90. If Grantee is not required to complete audited financial statements, the CYEFR must cover Grantee's fiscal year and must be submitted within 6 months of the Grantee's fiscal year-end.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 14 of 42 (b) The CYEFR must include an in relation to opinion from the auditor of the financial statements included in the audit.

- (c) The CYEFR must follow a format prescribed by Grantor.
- 12.3. Entities That Are Not "For-Profit".
 - (a) This Paragraph applies to Grantees that are not "for-profit" entities.

(b) Single and Program-Specific Audits. If, during its fiscal year, Grantee expends \$750,000 or more in federal Awards (direct federal and federal pass-through awards combined), Grantee must have a single audit or program-specific audit conducted for that year as required by 2 CFR 200.501 and other applicable sections of Subpart F of 2 CFR Part 200. The audit report packet must be completed as described in 2 CFR 200.512 (single audit) or 2 CFR 200.507 (program-specific audit), 44 III. Admin. Code 7000.90(h)(1) and the current GATA audit manual and submitted to the Federal Audit Clearinghouse, as required by 2 CFR 200.512. The results of peer and external quality control reviews, management letters issued by the auditors and their respective corrective action plans if significant deficiencies or material weaknesses are identified, and the CYEFR(s) must be submitted to the Grantee Portal. The due date of all required submissions set forth in this Paragraph is the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) nine (9) months after the end of Grantee's audit period.

(c) Financial Statement Audit. If, during its fiscal year, Grantee expends less than \$750,000 in federal Awards, Grantee is subject to the following audit requirements:

(i) If, during its fiscal year, Grantee expends \$500,000 or more in State-issued Awards, Grantee must have a financial statement audit conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS). Grantee may be subject to additional requirements in **PART TWO**, **PART THREE** or **Exhibit E** based on Grantee's risk profile.

(ii) If, during its fiscal year, Grantee expends less than \$500,000 in State-issued Awards, but expends \$300,000 or more in State-issued Awards, Grantee must have a financial statement audit conducted in accordance with the Generally Accepted Auditing Standards (GAAS).

(iii) If Grantee is a Local Education Agency (as defined in 34 CFR 77.1), Grantee must have a financial statement audit conducted in accordance with GAGAS, as required by 23 III. Admin. Code 100.110, regardless of the dollar amount of expenditures of State-issued Awards.

(iv) If Grantee does not meet the requirements in subsections 12.3(b) and 12.3(c)(i iii) but is required to have a financial statement audit conducted based on other regulatory requirements, Grantee must submit those audits for review.

(v) Grantee must submit its financial statement audit report packet, as set forth in 44 III. Admin. Code 7000.90(h)(2) and the current GATA audit manual, to the Grantee Portal within the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) six (6) months after the end of Grantee's audit period.

12.4. <u>"For-Profit" Entities</u>.

(a) This Paragraph applies to Grantees that are "for-profit" entities.

(b) Program-Specific Audit. If, during its fiscal year, Grantee expends \$750,000 or more in federal pass-through funds from State-issued Awards, Grantee must have a program-specific audit conducted in accordance with 2 CFR 200.507. The auditor must audit federal pass-through programs with federal pass-through Awards expended that, in the aggregate, cover at least 50 percent (0.50) of total federal pass-through Awards expended. The audit report packet must be completed as described in 2 CFR 200.507 (program-specific audit), 44 III. Admin. Code 7000.90 and the current GATA audit manual, and

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 15 of 42 must be submitted to the Grantee Portal. The due date of all required submissions set forth in this Paragraph is the earlier of (i) thirty (30) calendar days after receipt of the auditor's report(s) or (ii) nine (9) months after the end of Grantee's audit period.

(c) Financial Statement Audit. If, during its fiscal year, Grantee expends less than \$750,000 in federal pass-through funds from State-issued Awards, Grantee must follow all of the audit requirements in Paragraphs 12.3(c)(i)-(v), above.

(d) Publicly-Traded Entities. If Grantee is a publicly-traded company, Grantee is not subject to the single audit or program-specific audit requirements, but must submit its annual audit conducted in accordance with its regulatory requirements.

12.5. <u>Performance of Audits</u>. For those organizations required to submit an independent audit report, the audit must be conducted by the Illinois Auditor General (as required for certain governmental entities only), or a Certified Public Accountant or Certified Public Accounting Firm licensed in the State of Illinois or in accordance with Section 5.2 of the Illinois Public Accounting Act (225 ILCS 450/5.2). For all audits required to be performed subject to GAGAS or Generally Accepted Auditing Standards, Grantee must request and maintain on file a copy of the auditor's most recent peer review report and acceptance letter. Grantee must follow procedures prescribed by Grantor for the preparation and submission of audit reports and any related documents.

12.6. <u>Delinquent Reports</u>. When audit reports or financial statements required under this ARTICLE are prepared by the Illinois Auditor General, if they are not available by the above-specified due date, they must be provided to Grantor within thirty (30) days of becoming available. Grantee should refer to the State Grantee Compliance Enforcement System for the policy and consequences for late reporting. 44 Ill. Admin. Code 7000.80.

ARTICLE XIII TERMINATION; SUSPENSION; NON-COMPLIANCE

13.1. <u>Termination</u>.

(a) Either Party may terminate this Agreement, in whole or in part, upon thirty (30) calendar days' prior written notice to the other Party.

(b) If terminated by the Grantee, Grantee must include the reasons for such termination, the effective date, and, in the case of a partial termination, the portion to be terminated. If Grantor determines in the case of a partial termination that the reduced or modified portion of the Award will not accomplish the purposes for which the Award was made, Grantor may terminate the Agreement in its entirety. 2 CFR 200.340(a)(4).

(c) This Agreement may be terminated, in whole or in part, by Grantor:

(i) Pursuant to a funding failure under Paragraph 4.1;

(ii) If Grantee fails to comply with the terms and conditions of this or any Award, application or proposal, including any applicable rules or regulations, or has made a false representation in connection with the receipt of this or any Award; or

(iii) If the Award no longer effectuates the Program goals or agency priorities as set forth in **Exhibit A**, **PART TWO** or **PART THREE**.

13.2. <u>Suspension</u>. Grantor may suspend this Agreement, in whole or in part, pursuant to a funding failure under Paragraph 4.1 or if the Grantee fails to comply with terms and conditions of this or any Award. If

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suspension is due to Grantee's failure to comply, Grantor may withhold further payment and prohibit Grantee from incurring additional Obligations pending corrective action by Grantee or a decision to terminate this Agreement by Grantor. Grantor may allow necessary and proper costs that Grantee could not reasonably avoid during the period of suspension.

13.3. <u>Non-compliance</u>. If Grantee fails to comply with the U.S. Constitution, applicable statutes, regulations or the terms and conditions of this or any Award, Grantor may impose additional conditions on Grantee, as described in 2 CFR 200.208. If Grantor determines that non-compliance cannot be remedied by imposing additional conditions, Grantor may take one or more of the actions described in 2 CFR 200.339. The Parties must follow all Grantor policies and procedures regarding non-compliance, including, but not limited to, the procedures set forth in the State Grantee Compliance Enforcement System. 44 III. Admin. Code 7000.80 and 7000.260.

13.4. <u>Objection</u>. If Grantor suspends or terminates this Agreement, in whole or in part, for cause, or takes any other action in response to Grantee's non-compliance, Grantee may avail itself of any opportunities to object and challenge such suspension, termination or other action by Grantor in accordance with any applicable processes and procedures, including, but not limited to, the procedures set forth in the State Grantee Compliance Enforcement System. 2 CFR 200.342; 44 Ill. Admin. Code 7000.80 and 7000.260.

13.5. Effects of Suspension and Termination.

(a) Grantor may credit Grantee for allowable expenditures incurred in the performance of authorized services under this Agreement prior to the effective date of a suspension or termination.

(b) Except as set forth in subparagraph (c), below, Grantee must not incur any costs or Obligations that require the use of Grant Funds after the effective date of a suspension or termination, and must cancel as many outstanding Obligations as possible.

(c) Costs to Grantee resulting from Obligations incurred by Grantee during a suspension or after termination of the Agreement are not allowable unless Grantor expressly authorizes them in the notice of suspension or termination or subsequently. However, Grantor may allow costs during a suspension or after termination if:

(i) The costs result from Obligations properly incurred before the effective date of suspension or termination, are not in anticipation of the suspension or termination, and the costs would be allowable if the Agreement was not suspended or terminated prematurely. 2 CFR 200.343.

13.6. <u>Close-out of Terminated Agreements</u>. If this Agreement is terminated, in whole or in part, the Parties must comply with all close-out and post-termination requirements of this Agreement. 2 CFR 200.340(d).

ARTICLE XIV SUBCONTRACTS/SUBAWARDS

14.1. <u>Subcontracting/Subrecipients/Delegation</u>. Grantee must not subcontract nor issue a subaward for any portion of this Agreement nor delegate any duties hereunder without Prior Approval of Grantor. The requirement for Prior Approval is satisfied if the subcontractor or subrecipient has been identified in the uniform grant application, such as, without limitation, a Project description, and Grantor has approved. Grantee must notify any potential subrecipient that the subrecipient must obtain and provide to the Grantee a Unique Entity Identifier prior to receiving a subaward. 2 CFR 25.300.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 17 of 42 14.2. <u>Application of Terms</u>. If Grantee enters into a subaward agreement with a subrecipient, Grantee must notify the subrecipient of the applicable laws and regulations and terms and conditions of this Award by attaching this Agreement to the subaward agreement. The terms of this Agreement apply to all subawards authorized in accordance with Paragraph 14.1. 2 CFR 200.101(b)(2).

14.3. <u>Liability as Guaranty</u>. Grantee will be liable as guarantor for any Grant Funds it obligates to a subrecipient or subcontractor pursuant to this ARTICLE in the event Grantor determines the funds were either misspent or are being improperly held and the subrecipient or subcontractor is insolvent or otherwise fails to return the funds. 2 CFR 200.345; 30 ILCS 705/6; 44 Ill. Admin. Code 7000.450(a).

ARTICLE XV NOTICE OF CHANGE

15.1. <u>Notice of Change</u>. Grantee must notify Grantor if there is a change in Grantee's legal status, FEIN, UEI, SAM registration status, Related Parties, senior management (for non-governmental grantees only) or address. If the change is anticipated, Grantee must give thirty (30) days' prior written notice to Grantor. If the change is unanticipated, Grantee must give notice as soon as practicable thereafter. Grantor reserves the right to take any and all appropriate action as a result of such change(s).

15.2. <u>Failure to Provide Notification</u>. To the extent permitted by Illinois law (see Paragraph 21.2), Grantee must hold harmless Grantor for any acts or omissions of Grantor resulting from Grantee's failure to notify Grantor as required by Paragraph 15.1.

15.3. <u>Notice of Impact</u>. Grantee must notify Grantor in writing of any event, including, by not limited to, becoming a party to litigation, an investigation, or transaction that may have a material impact on Grantee's ability to perform under this Agreement. Grantee must provide notice to Grantor as soon as possible, but no later than five (5) days after Grantee becomes aware that the event may have a material impact.

15.4. <u>Effect of Failure to Provide Notice</u>. Failure to provide the notice described in this ARTICLE is grounds for termination of this Agreement and any costs incurred after the date notice should have been given may be disallowed.

ARTICLE XVI STRUCTURAL REORGANIZATION AND RECONSTITUTION OF BOARD MEMBERSHIP

16.1. Effect of Reorganization. This Agreement is made by and between Grantor and Grantee, as Grantee is currently organized and constituted. Grantor does not agree to continue this Agreement, or any license related thereto, should Grantee significantly reorganize or otherwise substantially change the character of its corporate structure, business structure or governance structure. Grantee must give Grantor prior notice of any such action or changes significantly affecting its overall structure or, for non-governmental grantees only, management makeup (for example, a merger or a corporate restructuring), and must provide all reasonable documentation necessary for Grantor to review the proposed transaction including financial records and corporate and shareholder minutes of any corporation which may be involved. Grantor reserves the right to terminate the Agreement based on whether the newly organized entity is able to carry out the requirements of the Award. This ARTICLE does not require Grantee to report on minor changes in the makeup of its board membership or governance structure, as applicable. Nevertheless, **PART TWO** or **PART THREE** may impose further restrictions. Failure to comply with this ARTICLE constitutes a material breach of this Agreement.

ARTICLE XVII CONFLICT OF INTEREST

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 18 of 42 17.1. <u>Required Disclosures</u>. Grantee must immediately disclose in writing any potential or actual Conflict of Interest to Grantor. 2 CFR 200.113; 30 ILCS 708/35.

17.2. <u>Prohibited Payments</u>. Payments made by Grantor under this Agreement must not be used by Grantee to compensate, directly or indirectly, any person currently holding an elective office in this State including, but not limited to, a seat in the General Assembly. In addition, where Grantee is not an instrumentality of the State of Illinois, as described in this Paragraph, Grantee must request permission from Grantor to compensate, directly or indirectly, any person employed by an office or agency of the State of Illinois. An instrumentality of the State of Illinois includes, without limitation, State departments, agencies, boards, and State universities. An instrumentality of the State of Illinois does not include, without limitation, units of Local Government and related entities.

17.3. <u>Request for Exemption</u>. Grantee may request written approval from Grantor for an exemption from Paragraph 17.2. Grantee acknowledges that Grantor is under no obligation to provide such exemption and that Grantor may grant an such exemption subject to additional terms and conditions as Grantor may require.

ARTICLE XVIII EQUIPMENT OR PROPERTY

18.1. <u>Purchase of Equipment</u>. For any equipment purchased in whole or in part with Grant Funds, if Grantor determines that Grantee has not met the conditions of 2 CFR 200.439, the costs for such equipment will be disallowed. Grantor must notify Grantee in writing that the purchase of equipment is disallowed.

18.2. <u>Prohibition against Disposition/Encumbrance</u>. Any equipment, material, or real property that Grantee purchases or improves with Grant Funds must not be sold, transferred, encumbered (other than original financing) or otherwise disposed of during the Award Term without Prior Approval of Grantor unless a longer period is required in <u>PART TWO</u> or <u>PART THREE</u> and permitted by 2 CFR Part 200 Subpart D. Use or disposition of real property acquired or improved using Grant Funds must comply with the requirements of 2 CFR 200.311. Real property, equipment, and intangible property that are acquired or improved in whole or in part using Grant Funds are subject to the provisions of 2 CFR 200.316. Grantor may require the Grantee to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with this Award and that use and disposition conditions apply to the property.

18.3. Equipment and Procurement. Grantee must comply with the uniform standards set forth in 2 CFR 200.310–200.316 governing the management and disposition of property, the cost of which was supported by Grant Funds. Any waiver from such compliance must be granted by either the President's Office of Management and Budget, the Governor's Office of Management and Budget, or both, depending on the source of the Grant Funds used. Additionally, Grantee must comply with the standards set forth in 2 CFR 200.317-200.326 to establish procedures to use Grant Funds for the procurement of supplies and other expendable property, equipment, real property and other services.

18.4. Equipment Instructions. Grantee must obtain disposition instructions from Grantor when equipment, purchased in whole or in part with Grant Funds, is no longer needed for their original purpose. Notwithstanding anything to the contrary contained in this Agreement, Grantor may require transfer of any equipment to Grantor or a third party for any reason, including, without limitation, if Grantor terminates the Award or Grantee no longer conducts Award activities. Grantee must properly maintain, track, use, store and insure the equipment according to applicable best practices, manufacturer's guidelines, federal and state laws or rules, and Grantor requirements stated herein.

18.5. <u>Domestic Preferences for Procurements</u>. In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, Grantee must, to the greatest extent practicable under this Award, provide a

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 19 of 42 preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Paragraph must be included in all subawards and in all contracts and purchase orders for work or products under this Award.

ARTICLE XIX PROMOTIONAL MATERIALS; PRIOR NOTIFICATION

19.1. <u>Promotional and Written Materials</u>. Use of Grant Funds for promotions is subject to the prohibitions for advertising or public relations costs in 2 CFR 200.421(e). In the event that Grant Funds are used in whole or in part to produce any written publications, announcements, reports, flyers, brochures or other written materials, Grantee must obtain Prior Approval for the use of those funds (2 CFR 200.467) and must include in these publications, announcements, reports, flyers, brochures are all other such material, the phrase "Funding provided in whole or in part by the [Grantor]." 2 CFR 200.467. Exceptions to this requirement must be requested, in writing, from Grantor and will be considered authorized only upon written notice thereof to Grantee.

19.2. <u>Prior Notification/Release of Information</u>. Grantee must notify Grantor ten (10) days prior to issuing public announcements or press releases concerning work performed pursuant to this Agreement, or funded in whole or in part by this Agreement, and must cooperate with Grantor in joint or coordinated releases of information.

ARTICLE XX

20.1. <u>Maintenance of Insurance</u>. Grantee must maintain in full force and effect during the Term of this Agreement casualty and bodily injury insurance, as well as insurance sufficient to cover the replacement cost of any and all real or personal property, or both, purchased or, otherwise acquired, or improved in whole or in part, with funds disbursed pursuant to this Agreement. 2 CFR 200.310. Additional insurance requirements may be detailed in <u>PART TWO</u> or <u>PART THREE</u>.

20.2. <u>Claims</u>. If a claim is submitted for real or personal property, or both, purchased in whole with funds from this Agreement and such claim results in the recovery of money, such money recovered must be surrendered to Grantor.

ARTICLE XXI LAWSUITS AND INDEMNIFICATION

21.1. Independent Contractor. Neither Grantee nor any employee or agent of Grantee acquires any employment rights with Grantor by virtue of this Agreement. Grantee must provide the agreed services and achieve the specified results free from the direction or control of Grantor as to the means and methods of performance. Grantee must provide its own equipment and supplies necessary to conduct its business; provided, however, that in the event, for its convenience or otherwise, Grantor makes any such equipment or supplies available to Grantee, Grantee's use of such equipment or supplies provided by Grantor pursuant to this Agreement is strictly limited to official Grantor or State of Illinois business and not for any other purpose, including any personal benefit or gain.

21.2. Indemnification and Liability.

(a) Non-governmental entities. This subparagraph applies only if Grantee is a nongovernmental entity. Grantee must hold harmless Grantor against any and all liability, loss, damage, cost

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or expenses, including attorneys' fees, arising from the intentional torts, negligence or breach of contract of Grantee, with the exception of acts performed in conformance with an explicit, written directive of Grantor. Indemnification by Grantor is governed by the State Employee Indemnification Act (5 ILCS 350/.01 et seq.) as interpreted by the Illinois Attorney General. Grantor makes no representation that Grantee, an independent contractor, will qualify or be eligible for indemnification under said Act.

(b) Governmental entities. This subparagraph applies only if Grantee is a governmental unit as designated in Paragraph 3.2. Neither Party shall be liable for actions chargeable to the other Party under this Agreement including, but not limited to, the negligent acts and omissions of the other Party's agents, employees or subcontractors in the performance of their duties as described under this Agreement, unless such liability is imposed by law. This Agreement is not construed as seeking to enlarge or diminish any obligation or duty owed by one Party against the other or against a third party.

ARTICLE XXII MISCELLANEOUS

22.1. <u>Gift Ban</u>. Grantee is prohibited from giving gifts to State employees pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/10-10) and Illinois Executive Order 15-09.

22.2. <u>Assignment Prohibited</u>. This Agreement must not be sold, assigned, or transferred in any manner by Grantee, to include an assignment of Grantee's rights to receive payment hereunder, and any actual or attempted sale, assignment, or transfer by Grantee without the Prior Approval of Grantor in writing renders this Agreement null, void and of no further effect.

22.3. <u>Copies of Agreements upon Request</u>. Grantee must, upon request by Grantor, provide Grantor with copies of contracts or other agreements to which Grantee is a party with any other State agency.

22.4. <u>Amendments</u>. This Agreement may be modified or amended at any time during its Term by mutual consent of the Parties, expressed in writing and signed by the Parties.

22.5. <u>Severability</u>. If any provision of this Agreement is declared invalid, its other provisions will remain in effect.

22.6. <u>No Waiver</u>. The failure of either Party to assert any right or remedy pursuant to this Agreement will not be construed as a waiver of either Party's right to assert such right or remedy at a later time or constitute a course of business upon which either Party may rely for the purpose of denial of such a right or remedy.

22.7. <u>Applicable Law; Claims</u>. This Agreement and all subsequent amendments thereto, if any, are governed and construed in accordance with the laws of the State of Illinois. Any claim against Grantor arising out of this Agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1 et seq. Grantor does not waive sovereign immunity by entering into this Agreement.

22.8. <u>Compliance with Law</u>. This Agreement and Grantee's Obligations and services hereunder must be performed in compliance with all applicable federal and State laws, including, without limitation, federal regulations, State administrative rules, including but not limited to 44 III. Admin. Code Part 7000, laws and rules which govern disclosure of confidential records or other information obtained by Grantee concerning persons served under this Agreement, and any license requirements or professional certification provisions.

22.9. <u>Compliance with Freedom of Information Act</u>. Upon request, Grantee must make available to Grantor all documents in its possession that Grantor deems necessary to comply with requests made under the Freedom of Information Act. 5 ILCS 140/7(2).

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Exhibit B

22.10. Precedence.

(a) Except as set forth in subparagraph (b), below, the following rules of precedence are controlling for this Agreement: In the event there is a conflict between this Agreement and any of the exhibits or attachments hereto, this Agreement controls. In the event there is a conflict between <u>PART</u> <u>ONE</u> and <u>PART TWO</u> or <u>PART THREE</u> of this Agreement, <u>PART ONE</u> controls. In the event there is a conflict between <u>PART TWO</u> and <u>PART THREE</u> of this Agreement, <u>PART TWO</u> controls. In the event there is a conflict between there is a conflict between this Agreement and relevant statute(s) or rule(s), the relevant statute(s) or rule(s) controls.

(b) Notwithstanding the provisions in subparagraph (a), above, if a relevant federal or state statute(s) or rule(s) requires an exception to this Agreement's provisions, or an exception to a requirement in this Agreement is granted by GATU, such exceptions must be noted in **PART TWO** or **PART THREE**, and in such cases, those requirements control.

22.11. <u>Illinois Grant Funds Recovery Act</u>. In the event of a conflict between the Illinois Grant Funds Recovery Act and the Grant Accountability and Transparency Act, the provisions of the Grant Accountability and Transparency Act control. 30 ILCS 708/80.

22.12. <u>Headings</u>. Articles and other headings contained in this Agreement are for reference purposes only and are not intended to define or limit the scope, extent or intent of this Agreement or any provision hereof.

22.13. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which are considered to be one and the same agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart. Duplicated signatures, signatures transmitted via facsimile, or signatures contained in a Portable Document Format (PDF) document are deemed original for all purposes.

22.14. <u>Attorney Fees and Costs</u>. Unless prohibited by law, if Grantor prevails in any proceeding to enforce the terms of this Agreement, including any administrative hearing pursuant to the Grant Funds Recovery Act or the Grant Accountability and Transparency Act, Grantor has the right to recover reasonable attorneys' fees, costs and expenses associated with such proceedings.

22.15. <u>Continuing Responsibilities</u>. The termination or expiration of this Agreement does not affect: (a) the right of Grantor to disallow costs and recover funds based on a later audit or other review; (b) the obligation of the Grantee to return any funds due as a result of later refunds, corrections or other transactions, including, without limitation, final Indirect Cost Rate adjustments and those funds obligated pursuant to ARTICLE XIV; (c) the CYEFR(s); (d) audit requirements established in 44 III. Admin. Code 7000.90 and ARTICLE XII ; (e) property management and disposition requirements established in 2 CFR 200.310 through 2 CFR 200.316 and ARTICLE XVIII; or (f) records related requirements pursuant to ARTICLE IX. 44 III. Admin. Code 7000.440.

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EXHIBIT A

PROJECT DESCRIPTION

Grantee must complete the Award Activities described on this <u>Exhibit A</u>, the Deliverables and Milestones listed on <u>Exhibit B</u> and the Performance Measures listed on <u>Exhibit D</u> within the term of this Agreement, as provided in Paragraph 2.1, herein.

AUTHORITY: The Grantor is authorized to make this Award pursuant to 20 ILCS 605/605-55 and/or 20 ILCS 605/605-30.

The purpose of this authority is as follows:

To make and enter into contracts, including grants, as authorized pursuant to appropriations by the General Assembly. and/or to use the State and federal programs, grants, and subsidies that are available to assist in the discharge of the provisions of the Civil Administrative Code of Illinois.

PROJECT DESCRIPTION:

The Grantee is a governmental entity providing services to the City of Des Plains in Cook County.

Grant funds will be utilized for a portion of the costs, including any that are prior incurred, associated with roadway improvements to include water main replacement and storm sewer rehabilitation to Grantee-owned streets in the City of Des Plaines, Illinois. This project will improve drainage on residential streets, reducing flooding and eliminate hazardous conditions of roadway flooding and deteriorated pavement and curbs around storm sewer catch basins and manholes. Several catch basins, manholes and pipes are in poor condition and will be rehabilitated or replaced. All other costs associated with the completion of the project will be paid using other funding sources.

The locations include the following streets:

Ambleside Road - Lance Drive to Victoria Road Ashland Avenue - Cora Street to Lee Street Berry Lane - River Road to North End Chestnut Street - Prospect Avenue to Howard Avenue Howard Avenue - Chestnut Street to Mannheim Road Marshall Drive - Florian Drive to Algonguin Road

Specifically, Grant funds will include a portion of the *"Plumbing"* costs associated with the removal and replacement of bondable items such as: piping; drainage pipe; manholes; catch basins; frames; lids; to include adjustments and reconstruction.

The completion of this project will benefit the public by providing appropriate storm water management to approximately 2000 residents. Additionally, the improvements will positively affect several thousand residents in each neighborhood indirectly.

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EXHIBIT B

DELIVERABLES OR MILESTONES

To be stated on the initial submitted Periodic Performance Report (PPR), as directed by the Report Deliverable Schedule, the Grantee will provide a detailed task list of projected deliverables, which must be approved by Grantor. These tasks and associated due dates, and any subsequent revisions, shall be incorporated by reference into this Agreement. These tasks will be used to measure performance throughout the life of the Award and can be updated and reported on each PPR reporting due date.

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EXHIBIT C

CONTACT INFORMATION

CONTACTS FOR NOTIFICATION AND GRANT ADMINISTRATION:

Unless specified elsewhere, all notices required or desired to be sent by either Party must be sent to the persons listed below. Grantee must notify Grantor of any changes in its contact information listed below within five (5) business days from the effective date of the change, and Grantor must notify Grantee of any changes to its contact information as soon as practicable. The Party making a change must send any changes in writing to the contact for the other Party. No amendment to this Agreement is required if information in this Exhibit is changed.

FOR OFFICIAL GRANT NOTIFICATIONS

GRANTOR CC	<u>INTACT</u>	GRANTEE CO	NTACT
Name:	Kristin A. Richards	Name:	Andrew Goczkowski
Title:	Director	Title:	Mayor
Address:	607 E. Adams St. Springfield, IL 62701	Address:	1420 MINER ST Des Plaines, IL 60016-4484

GRANTEE PAYMENT ADDRESS

(If different than the address above)

Address: N/A

FOR GRANT ADMINISTRATION

GRANTOR CONTACT

GRANTEE CONTACT

Name:	Tammy Greco	Name:	Becka Shipp
Title:	Grant Manager	Title:	Assistant Director of Engineering
Address:	607 E. Adams St.		
	Springfield, IL 62701	Address:	1420 MINER ST
Phone:	217-785-9974		Des Plaines, IL 60016-4484
TTY#:	(800) 785-6055	Phone:	847-391-5390
Email	tammy.m.greco@illinois.gov	TTY#:	N/A
Address:		Email	bshipp@desplaines.org
		Address:	

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GRANTEE DESIGNEES

The following are designated as Authorized Designee(s) for the Grantee (See **PART TWO**, ARTICLE XXIII):

Authorized Designee:	Becka Shipp	
Authorized Designee Title:	Assistant Director of Engineering	
Authorized Designee Phone:	(847) 391-5390	
Authorized Designee Email:	bshipp@desplaines.org	
	Authorized Designee Signature:	
	Authorized Signatory Approval:	
Authorized Designee:	Timothy Oakley	
Authorized Designee: Authorized Designee Title:	Timothy Oakley Director of Public Works and Engineerin	ησ
Authorized Designee: Authorized Designee Title: Authorized Designee Phone:	Timothy Oakley Director of Public Works and Engineerin (847) 391-5390	ng
Authorized Designee Title:	Director of Public Works and Engineerin	Ig
Authorized Designee Title: Authorized Designee Phone:	Director of Public Works and Engineerir (847) 391-5390	ıg

GRANTOR CONTACT FOR AUDIT OR CONSOLIDATED YEAR-END FINANCIAL REPORTS QUESTIONS-AUDIT UNIT

Email: <u>externalauditunit@illinois.gov</u>

GRANTOR CONTACT FOR FINANCIAL CLOSEOUT QUESTIONS-PROGRAM ACCOUNTANT

Name:	James Kanter
Email:	james.f.kanter@illinois.gov
Phone:	000-000-0000
Fax#:	N/A

Address: 607 E. Adams St. Springfield, IL 62701

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EXHIBIT D

PERFORMANCE MEASURES AND STANDARDS

To be stated on the initial submitted Periodic Performance Report (PPR), as directed by the Report Deliverable Schedule, the Grantee will incorporate project specific performance measures within the corresponding section of the PPR. The project specific performance measures will encompass the following standardized performance measures listed below.

- Did the deliverables specified in the task list submitted pursuant to Exhibit B lead to the completion of the project described in Exhibit A?
- Given the total amount of Grant Funds available, does the percent currently drawn and expended directly correlate to the percent of the completion of the project to date?
- At the time of Award closeout, has the Grantee fulfilled the public purpose of the project stated in Exhibit A?

The Grantor reserves the right to deny any voucher request(s) at its discretion, based on lack of progress toward meeting completion goals. If the Grantee fails to meet any of the performance measures/goals, and if deemed appropriate at the discretion of the Grantor, the Grant Funds may be decreased by an amount proportionate to the size of the shortfall, and/or the Grantee may be responsible for the return of the Grant Funds in the amount specified by the Grantor. Grantor may initiate a grant modification(s) to de-obligate Grant Funds based on non-performance. The Grantee will submit grant modification requests as necessary in a timely manner, including a request to de-obligate Grant Funds in an amount that the Grantee determines will be unspent by the end of the Grant Agreement Term.

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EXHIBIT E

SPECIFIC CONDITIONS

Grantor may remove (or reduce) a Specific Condition included in this Exhibit by providing written notice to the Grantee, in accordance with established procedures for removing a Specific Condition.

There were no conditions resulting from the Internal Control Questionnaire (ICQ).

There were no conditions resulting from the Programmatic Risk Assessment.

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PART TWO – GRANTOR-SPECIFIC TERMS

In addition to the uniform requirements in **<u>PART ONE</u>**, Grantor has the following additional requirements for its Grantee:

ARTICLE XXIII AUTHORIZED SIGNATORY

23.1. <u>Authorized Signatory</u>. In processing this Award and related documentation, Grantor will only accept materials signed by the Authorized Signatory or Designee of this Agreement, as designated or prescribed in the Grantee's signature block or on <u>Exhibit C</u>. If the Authorized Signatory chooses to assign a designee to sign or submit materials required by this Agreement to Grantor, the Authorized Signatory must either send written notice to Grantor indicating the name of the designee, or provide notice as set forth in <u>Exhibit C</u>. Without this notice, Grantor will reject any materials signed or submitted on the Grantee's behalf by anyone other than the Authorized Signatory. The Authorized Signatory must approve each Authorized Designee separately by signing as indicated on <u>Exhibit C</u> or on the appropriate form provided by Grantor. If an Authorized Designee(s) appears on <u>Exhibit C</u>, the Grantee should verify the information and indicate any changes as necessary. Signatures of both the Authorized Signatory and the Authorized Designee are required in order for the Authorized Designee to have signature authority under this Agreement.

ARTICLE XXIV ADDITIONAL AUDIT PROVISIONS

24.1. <u>Discretionary Audit</u>. The Grantor may, at any time and in its sole discretion, require a programspecific audit, or other audit, SAS 115/AU-C265 letters (Auditor's Communication of Internal Control Related Matters) and SAS 114/AU-C260 letters (Auditor's Communication With Those Charged With Governance).

ARTICLE XXV ADDITIONAL MONTORING PROVISIONS

25.1. <u>Access to Documentation</u>. The Award will be monitored for compliance in accordance with the terms and conditions of this Agreement, together with appropriate programmatic rules, regulations, and/or guidelines that the Grantor promulgates or implements. The Grantee must permit any agent authorized by the Grantor, upon presentation of credentials, in accordance with all methods available by law, full access to and the right to examine any document, papers and records either in hard copy or electronic format, of the Grantee involving transactions relating to this Award.

25.2. <u>Cooperation with Audits and Inquiries, Confidentiality</u>. Pursuant to ARTICLE IX, above, the Grantee is obligated to cooperate with the Grantor and other legal authorities in any audit or inquiry related to the Award. The Grantor or any other governmental authority conducting an audit or inquiry may require the Grantee to keep confidential any audit or inquiry and to limit internal disclosure of the audit or inquiry to those Grantee personnel who are necessary to support the Grantee's response to the audit or inquiry. This confidentiality requirement does not limit Grantee's right to discuss an audit or inquiry with its legal counsel. If a third party seeks to require the Grantee, pursuant to any law, regulation, or legal process, to disclose an audit or inquiry that has been deemed confidential by the Grantor or other governmental authority, the Grantee must promptly notify the entity that is conducting the audit or inquiry of such effort so that the entity that is conducting the audit or inquiry may seek a protective order, take other appropriate action, or waive compliance by the Grantee with the confidentiality requirement.

ARTICLE XXVI ADDITIONAL INTEREST PROVISIONS

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 29 of 42 26.1. Interest Earned on Grant Funds. Interest earned on Grant Funds in an amount up to \$500 per year may be retained by the Grantee for administrative expenses unless otherwise provided in **PART THREE**. Any additional interest earned on Grant Funds above \$500 per year must be returned to the Grantor pursuant to Paragraphs 4.3 and 29.2 herein, or as otherwise instructed by the Grant Manager or as set forth in **PART THREE**. All interest earned must be expended prior to Grant Funds. Any unspent Grant Funds or earned interest unspent must be returned as Grant Funds to the Grantor as described in Paragraphs 4.3 and 29.2 herein. All interest earned on Grant runds must be accounted for and reported to the Grantor as provided in ARTICLE X herein. If applicable, the Grantor will remit interest earned and returned by Grantee to the U.S. Department of Health and Human Services Payment Management System through the process set forth at 2 CFR 200.305(b)(9), or as otherwise directed by the federal awarding agency. The provisions of this Paragraph are inapplicable to the extent any statute, rule or program requirement provides for different treatment of interest income. Any provision that deviates from this paragraph is set forth in **PART THREE**.

ARTICLE XXVII ADDITIONAL BUDGET PROVISIONS

27.1. <u>Restrictions on Line Item Transfers</u>. Unless set forth otherwise in <u>PART THREE</u> herein, Budget line item transfers within the guidelines set forth in paragraph 6.2 herein, which would not ordinarily require approval from Grantor, but vary more than ten percent (10%) of the current approved Budget line item amount, are considered changes in the project scope and require Prior Approval from Grantor pursuant to 44 III. Admin. Code 7000.370(b).

ARTICLE XXVIII ADDITIONAL REPRESENTATIONS AND WARRANTIES

28.1. <u>Grantee Representations and Warranties</u>. In connection with the execution and delivery of this Agreement, the Grantee makes the following representations and warranties to Grantor:

(a) That it has no public or private interest, direct or indirect, and will not acquire, directly or indirectly any such interest which does or may conflict in any manner with the performance of the Grantee's services and obligations under this Agreement;

(b) That no member of any governing body or any officer, agent or employee of the State, has a personal financial or economic interest directly in this Agreement, or any compensation to be paid hereunder except as may be permitted by applicable statute, regulation or ordinance;

(c) That there is no action, suit or proceeding at law or in equity pending, nor to the best of Grantee's knowledge, threatened, against or affecting the Grantee, before any court or before any governmental or administrative agency, which will have a material adverse effect on the performance required by this Agreement;

(d) That to the best of the Grantee's knowledge and belief, the Grantee, its principals and key project personnel:

(i) Are not presently declared ineligible or voluntarily excluded from contracting with any federal or State department or agency;

(ii) Have not, within a three (3)-year period preceding this Agreement, been convicted of any felony; been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; had a civil judgment rendered against them for commission of fraud; been found in violation of federal or state antitrust statutes; or been convicted of embezzlement, theft, larceny, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property;

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 30 of 42 (iii) Are not presently indicted for, or otherwise criminally or civilly charged, by a government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (ii) of this certification; and

(iv) Have not had, within a three (3)-year period preceding this Agreement, any judgment rendered in an administrative, civil or criminal matter against the Grantee, or any entity associated with its principals or key personnel, related to a grant issued by any federal or state agency or a local government.

Any request for an exception to the provisions of this subparagraph (d) must be made in writing, listing the name of the individual, home address, type of conviction and date of conviction; and

(e) Grantee certifies that it is not currently operating under, or subject to, any cease and desist order, or subject to any informal or formal regulatory action, and, to the best of Grantee's knowledge, that it is not currently the subject of any investigation by any state or federal regulatory, law enforcement or legal authority. Should it become the subject of an investigation by any state or federal regulatory, law enforcement or legal authority, Grantee shall promptly notify Grantor of any such investigation. Grantee acknowledges that should it later be subject to a cease and desist order, Memorandum of Understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, that Grantor is authorized to declare Grantee out of compliance with this Agreement and suspend or terminate the Agreement pursuant to ARTICLE XIII herein and any applicable rules.

ARTICLE XXIX

ADDITIONAL TERMINATION, SUSPENSION, BILLING SCHEDULE AND NON-COMPLIANCE PROVISIONS

29.1. <u>Remedies for Non-Compliance</u>. If Grantor suspends or terminates this Agreement pursuant to ARTICLE XIII herein, Grantor may also elect any additional remedy allowed by law, including, but not limited to, one or more of the following remedies:

(a) Direct the Grantee to refund some or all of the Grant Funds disbursed to it under this Agreement; and

(b) Direct the Grantee to remit an amount equivalent to the "Net Salvage Value" of all equipment or materials purchased with Grant Funds provided under this Agreement. For purposes of this Agreement, "Net Salvage Value" is defined as the amount realized, or that the Parties agree is likely to be realized from, the sale of equipment or materials purchased with Grant Funds provided under this Agreement at its current fair market value, less selling expenses.

29.2. <u>Grant Refunds</u>. In accordance with the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq.*, the Grantee must, within forty-five (45) days of the effective date of a termination of this Agreement, refund to Grantor, any balance of Grant Funds not spent or not obligated as of that date.

29.3. <u>Grant Funds Recovery Procedures</u>. In the event that Grantor seeks to recover from Grantee Funds received pursuant to this Award that: (i) Grantee cannot demonstrate were properly spent, or (ii) have not been expended or legally obligated by the time of expiration or termination of this Award, the Parties agree to follow the procedures set forth in the Illinois Grant Funds Recovery Act, 30 ILCS 705/1 *et seq*. (GFRA), for the recovery of Grant Funds, including the informal and formal hearing requirements. All remedies available in Section 6 of the GFRA will apply to these proceedings. The Parties agree that Grantor's Administrative Hearing Rules (56 Ill. Admin. Code Part 2605) and/or any other applicable hearing rules shall govern these proceedings.

29.4. <u>Grantee Responsibility</u>. Grantee will be held responsible for the expenditure of all Grant Funds received through this Award, whether expended by Grantee or a subrecipient or contractor of Grantee. Grantor may

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Exhibit B

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seek any remedies against Grantee permitted pursuant to this Agreement and 2 CFR 200.339 for the action of a subrecipient or contractor of Grantee that is not in compliance with the applicable statutes, regulations or the terms and conditions of this Award.

29.5. <u>Billing Schedule</u>. In accordance with paragraph 4.8, herein Grantee must submit all payment requests to Grantor within thirty (30) days of the end of the quarter, unless another billing schedule is specified in **PART THREE** or Paragraph 2.3. Failure to submit such payment request timely will render the amounts billed an unallowable cost which Grantor cannot reimburse. In the event that Grantee is unable, for good cause, to submit its payment request timely, Grantee must timely notify Grantor and may request an extension of time to submit the payment request. Grantor's approval of Grantee's request for an extension cannot be unreasonably withheld. The payment requirements of this Paragraph supersede those set forth in Paragraph 4.8.

ARTICLE XXX ADDITIONAL MODIFICATION PROVISIONS

30.1. <u>Modifications by Operation of Law</u>. This Agreement is subject to such modifications as the Grantor determines, in its sole discretion, may be required by changes in federal or State law or regulations applicable to this Agreement. Grantor will initiate such modifications, and Grantee will be required to agree to the modification in writing as a condition of continuing the Award. Any such required modification will be incorporated into and become part of this Agreement as if fully set forth herein. The Grantor will timely notify the Grantee of any pending implementation of or proposed amendment to any laws or regulations of which it has notice.

30.2. Discretionary Modifications. If either the Grantor or the Grantee wishes to modify the terms of this Agreement other than as set forth in ARTICLES V and VI and Paragraphs 30.1 and 30.3, written notice of the proposed modification must be given to the other Party. Modifications will only take effect when agreed to in writing by both the Grantor and the Grantee. However, if the Grantor notifies the Grantee in writing of a proposed modification, and the Grantee fails to respond to that notification, in writing, within thirty (30) days, the Grantor may commence a process to suspend or terminate this Award. In making an objection to the proposed modification, the Grantee must specify the reasons for the objection and the Grantor's notice to the Grantee must contain the Grantee name, Agreement number, Amendment number and purpose of the revision. If the Grantee seeks any modification to the Agreement, the Grantee must submit a detailed narrative explaining why the Project cannot be completed in accordance with the terms of the Agreement and how the requested modification will ensure completion of the Grant Activities, Deliverables, Milestones and/or Performance Measures (**Exhibits A**, **B** and **D**).

30.3. <u>Unilateral Modifications</u>. The Parties agree that Grantor may, in its sole discretion, unilaterally modify this Agreement without prior approval of the Grantee when the modification is initiated by Grantor for the sole purpose of increasing the Grantee's funding allocation as additional funds become available for the Award during the program year covered by the Term of this Agreement.

30.4. <u>Management Waiver</u>. The Parties agree that the Grantor may issue a waiver of specific requirements of this Agreement after the term of the Agreement has expired. These waivers are limited to nonmaterial changes to specific provisions that the Grantor determines are necessary to place the Grantee in administrative compliance with the requirements of this Agreement. A management waiver issued after the Term of the Agreement has expired will supersede the original requirements of this Agreement that would normally require a modification of this Agreement to be executed. The Grantor will make no modifications of this Agreement not agreed to prior to the expiration of the Agreement beyond what is specifically set forth in this Paragraph.

30.5. <u>Term Extensions</u>. The Grantee acknowledges that all Grant Funds must be expended or legally obligated, and all Grant Activities, Deliverables, Milestones and Performance Measures (<u>Exhibits A</u>, <u>B</u> and <u>D</u>) must be completed during the Term of the Agreement. Extensions of the Term will be granted only for good cause, subject to the Grantor's discretion. Pursuant to the Grant Funds Recovery Act (30 ILCS 705/1 *et seq.*), no Award may be

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 32 of 42 extended in total beyond a two (2)-year period unless the Grant Funds are expended or legally obligated during that initial two-year period, or unless Grant Funds are disbursed for reimbursement of costs previously incurred by the Grantee. If Grantee requires an extension of the Award Term, Grantee should submit a written request to the Grant Manager at least sixty (60) days prior to the end of the Award Term or extended Award Term, as applicable, stating the reason for the extension. If Grantee provides reasonable extenuating circumstances, Grantee may request an extension of the Award Term with less than sixty (60) days remaining.

ARTICLE XXXI ADDITIONAL CONFLICT OF INTEREST PROVISIONS

31.1. <u>Bonus or Commission Prohibited</u>. The Grantee shall not pay any bonus or commission for the purpose of obtaining the Grant Funds awarded under this Agreement.

31.2. <u>Hiring State Employees Prohibited</u>. No State officer or employee may be hired to perform services under this Agreement on behalf of the Grantee, or be paid with Grant Funds derived directly or indirectly through this Award without the written approval of the Grantor unless Grantee is a State agency.

ARTICLE XXXII ADDITIONAL EQUIPMENT OR PROPERTY PROVISIONS

32.1. <u>Equipment Management</u>. The Grantee is responsible for replacing or repairing equipment and materials purchased with Grant Funds that are lost, stolen, damaged, or destroyed. Any loss, damage or theft of equipment and materials must be investigated and fully documented, and immediately reported to the Grantor and, where appropriate, the appropriate law enforcement authorities.

32.2. <u>Purchase of Real Property</u>. If permitted by the Award Budget and scope of activities provided in this Agreement, a Grantee may use the Grant Funds during the Award Term for the costs associated with the purchase of real property (as defined by 2 CFR 200.1) either through the use of reimbursement or advanced funds as permitted in Paragraph 2.3 of this Agreement for the following purposes and consistent with the Grantor's bondability guidelines and 2 CFR 200:

- (a) Cash payment of the entirety or a portion of the real property acquisition;
- (b) Cash Payment of a down payment for the acquisition;
- (c) Standard and commercially reasonable costs required to be paid at the acquisition closing (*i.e.*, closing costs); or
- (d) Payments to reduce the debt incurred by Grantee to purchase the real property.

32.3. <u>Bonding Requirements</u>. If Grant Funds through this Award are used for construction or facility improvement projects that exceed the Simplified Acquisition Threshold, the Grantee must comply with the minimum bonding requirements listed in 2 CFR 200.326(a) – (c). Grantor will not accept the Grantee's own bonding policy and requirements.

32.4. <u>Lien Requirements</u>. Grantor may direct Grantee in writing to record a lien or notice of State or federal interest on the property purchased or improved with Grant Funds. 2 CFR 200.316. If Grantor makes this direction and the Grantee does not comply, the Grantor may: (a) record the lien or notice of State or federal interest and reduce the amount of the Grant Funds by the cost of recording the lien or notice of State or federal interest, or (b) suspend this Award until Grantee complies with Grantor's direction.

ARTICLE XXXIII APPLICABLE STATUTES

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 33 of 42 To the extent applicable, Grantor and Grantee shall comply with the following:

33.1. <u>Grantee Responsibility</u>. Grantee is responsible for ensuring compliance with all applicable laws, rules and regulations, including, but not limited to those specifically referenced herein. Except where expressly required by applicable laws and regulations, the Grantor shall not be responsible for monitoring Grantee's compliance.

33.2. Land Trust Beneficial Interest Disclosure Act (765 ILCS 405/2.1). No Grant Funds will be paid to any trustee of a land trust, or any beneficiary or beneficiaries of a land trust, for any purpose relating to the land, which is the subject of such trust, any interest in such land, improvements to such land or use of such land unless an affidavit is first filed with the Grantor identifying each beneficiary of the land trust by name and address and defining such interest therein. This affidavit must be filed with the Illinois Office of the Comptroller as an attachment to this Agreement.

33.3. <u>Historic Preservation Act (20 ILCS 3420/1 et seq.)</u>. The Grantee will not expend Grant Funds under this Agreement which result in the destruction, alteration, renovation, transfer or sale, or utilization of a historic property, structure or structures, or in the introduction of visual, audible or atmospheric elements to a historic property, structure or structures, which will result in the change in the character or use of any historic property, except as approved by the Illinois Department of Natural Resources, Historic Preservation Division. The Grantee must not expend Grant Funds under this Agreement for any project, activity, or program that can result in changes in the character or use of historic property, if any historic property is located in the area of potential effects without the approval of the Illinois Department of Natural Resources, Historic Preservation Division. 20 ILCS 3420/3(f).

33.4. <u>Victims' Economic Security and Safety Act (820 ILCS 180 et seq.</u>). If the Grantee has one (1) or more employees, it may not discharge or discriminate against an employee who is a victim of domestic or sexual violence, or who has a family or household member who is a victim of domestic or sexual violence, for taking up to the allowable amount of leave from work to address the domestic violence, pursuant to the Victims' Economic Security and Safety Act. 820 ILCS 180/20(a)(2). The Grantee is not required to provide paid leave under the Victims' Economic Security and Safety Act, but may not suspend group health plan benefits during the leave period. Any failure on behalf of the Grantee to comply with all applicable provisions of the Victims' Economic Security and Safety Act, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by statute or regulation.

33.5. Equal Pay Act of 2003 (820 ILCS 112 *et seq.*). If the Grantee has one (1) or more employees, it is prohibited by the Equal Pay Act of 2003 from: (a) discriminating between employees by paying unequal wages on the basis of sex for doing the same or substantially similar work; (b) discriminating between employees by paying wages to an African-American employee at a rate less than the rate at which the Grantee pays wages to another employee who is not African-American for the same or substantially similar work; (c) remedying violations of the Equal Pay Act of 2003 by reducing the wages of other employees or discriminating against any employee exercising their rights under the Equal Pay Act of 2003; and (d) screening job applicants based on their current or prior wages or salary histories, or requesting or requiring a wage or salary history from an individual as a condition of employment or consideration for employment. Any failure on behalf of the Grantee to comply with all applicable provisions of the Equal Pay Act of 2003, or applicable rules and regulations promulgated thereunder, may result in a determination that the Grantee is ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked, as provided by statute or regulation.

33.6. <u>Steel Products Procurement Act (30 ILCS 565/1 *et seq.*)</u>. The Grantee, if applicable, hereby certifies that any steel products used or supplied in accordance with this Award for a public works project shall be

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 34 of 42 manufactured or produced in the United States per the requirements of the Steel Products Procurement Act (30 ILCS 565/1 *et seq.*).

33.7. <u>Business Enterprise for Minorities, Women, and Persons with Disabilities Act and Illinois Human</u> <u>Rights Act (30 ILCS 575/0.01; 775 ILCS 5/2-105)</u>. The Grantee acknowledges and hereby certifies compliance with the provisions of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, and the equal employment practices of Section 2-105 of the Illinois Human Rights Act for the provision of services which are directly related to the Award activities to be performed under this Agreement.

33.8. Identity Protection Act (5 ILCS 179/1 et seq.) and Personal Information Protection Act (815 ILCS 530/1 et seq.). The Grantor is committed to protecting the privacy of its vendors, grantees and beneficiaries of programs and services. At times, the Grantor will request social security numbers or other personal identifying information. Federal and state laws, rules and regulations require the collection of this information for certain purposes relating to employment and/or payments for goods and services, including, but not limited to, Awards. The Grantor also collects confidential information for oversight and monitoring purposes.

Furnishing personal identity information, such as a social security number, is voluntary; however, failure to provide required personal identity information may prevent an individual or organization from using the services/benefits provided by the Grantor as a result of state or federal laws, rules and regulations.

To the extent the Grantee collects or maintains protected personal information as part of carrying out the Award activities, the Grantee must maintain the confidentiality of the protected personal information in accordance with applicable law and as set forth below.

(a) Personal Information Defined. As used herein, "Personal Information" shall have the definition set forth in the Personal Information Protection Act, 815 ILCS 530/5 ("PIPA").

(b) Protection of Personal Information. The Grantee must use at least reasonable care to protect the confidentiality of Personal Information that is collected or maintained as part of the Award activities and (i) not use any Personal Information for any purpose outside the scope of the Award activities and (ii) except as otherwise authorized by the Grantor in writing, limit access to Personal Information to those of its employees, contractors, and agents who need such access for purposes consistent with the Award Activities. If Grantee provides any contractor or agent with access to Personal Information, it must require the contractor or agent to comply with the provisions of this Paragraph.

(c) Security Assurances. Grantee represents and warrants that it has established and will maintain safeguards against the loss and unauthorized access, acquisition, destruction, use, modification, or disclosure of Personal Information and shall otherwise maintain the integrity of Personal Information in its possession in accordance with any federal or state law privacy requirements, including PIPA. These safeguards must be reasonably designed to (i) ensure the security and confidentiality of the Personal Information, (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information, and (iii) protect against unauthorized access to or use of Personal Information. Additionally, Grantee will have in place policies, which provide for the secure disposal of documents and information which contain Personal Information, including but not limited to shredding documents and establishing internal controls over the authorized access to such information. 815 ILCS 530/40.

(d) Breach Response. In the event of any unauthorized access to, unauthorized disclosure of, loss of, damage to or inability to account for any Personal Information (a "Breach"), Grantee agrees that it will promptly, at its own expense: (i) report such Breach to the Grantor by telephone with immediate written confirmation sent by e-mail, describing in detail any accessed materials and identifying any individual(s) who may have been involved in such Breach; (ii) take all actions necessary or reasonably requested by the Grantor to stop, limit or minimize the Breach; (iii) restore and/or retrieve, as applicable, and return all Personal Information that was lost, damaged, accessed, copied or removed; (iv) cooperate in

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 35 of 42 all reasonable respects to minimize the damage resulting from such Breach; (v) provide any notice to Illinois residents as required by 815 ILCS 530/10, 815 ILCS 530/12 or applicable federal law, in consultation with the Grantor; and (vi) cooperate in the preparation of any report related to the Breach that the Grantor may need to present to any governmental body.

(e) Injunctive Relief. Grantee acknowledges that, in the event of a breach of this Paragraph, Grantor will likely suffer irreparable damage that cannot be fully remedied by monetary damages. Accordingly, in addition to any remedy which the Grantor may possess pursuant to applicable law, the Grantor retains the right to seek and obtain injunctive relief against any such breach in any Illinois court of competent jurisdiction.

(f) Compelled Access or Disclosure. The Grantee may disclose Personal Information if it is compelled by law, regulation, or legal process to do so, provided the Grantee gives the Grantor at least ten (10) days' prior notice of such compelled access or disclosure (to the extent legally permitted) and reasonable assistance if the Grantor wishes to contest the access or disclosure.

ARTICLE XXXIV ADDITIONAL MISCELLANEOUS PROVISIONS

34.1. <u>Workers' Compensation Insurance, Social Security, Retirement and Health Insurance Benefits, and</u> <u>Taxes</u>. The Grantee must provide Workers' Compensation insurance where the same is required and accepts full responsibility for the payment of unemployment insurance, premiums for Workers' Compensation, Social Security and retirement and health insurance benefits, as well as all income tax deduction and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

34.2. <u>Required Notice</u>. Grantee agrees to give prompt notice to the Grantor of any event that may materially affect the performance required under this Agreement. Any notice or final decision by Grantor relating to (a) a Termination or Suspension (ARTICLE XIII), (b) Modifications, Management Waivers or Term Extensions (ARTICLE XXX) or (c) Assignments (Paragraph 22.2) must be executed by the Director of the Grantor or her or his authorized designee.

ARTICLE XXXV ADDITIONAL REQUIRED CERTIFICATIONS

The Grantee makes the following certifications as a condition of this Agreement. These certifications are required by State statute and are in addition to any certifications required by any federal funding source as set forth in this Agreement. Grantee's execution of this Agreement shall serve as its attestation that the certifications made herein are true and correct.

35.1. <u>Sexual Harassment</u>. The Grantee certifies that it has written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the Grantee's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (vi) directions on how to contact the Department of Human Rights and the Human Rights Commission; and (vii) protection against retaliation as provided by Sections 6-101 and 6-101.5 of the Illinois Human Rights Act. 775 ILCS 5/2-105(A)(4). A copy of the policies must be provided to the Grantor upon request.

35.2. <u>Federal, State and Local Laws; Tax Liabilities; State Agency Delinquencies</u>. The Grantee is required to comply with all federal, state and local laws, including but not limited to the filing of any and all applicable tax returns. If Grantee is delinquent in filing and/or paying any federal, state and/or local taxes, the Grantor will disburse

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 36 of 42 Grant Funds only if the Grantee enters into an installment payment agreement with the applicable tax authority and remains in good standing with that authority. Grantee is required to tender a copy of all relevant installment payment agreements to the Grantor. In no event may Grantee utilize Grant Funds to discharge outstanding tax liabilities or other debts owed to any governmental unit. The execution of this Agreement by the Grantee is its certification that: (i) it is current as to the filing and payment of any federal, state and/or local taxes applicable to Grantee; and (ii) it is not delinquent in its payment of moneys owed to any federal, state, or local unit of government.

35.3. <u>Lien Waivers</u>. If applicable, the Grantee must monitor construction to assure that necessary contractors' affidavits and waivers of mechanics liens are obtained prior to release of Grant Funds to contractors and subcontractors.

35.4. <u>Grant for the Construction of Fixed Works</u>. Grantee certifies that all Projects for the construction of fixed works which are financed in whole or in part with funds provided by this Agreement will be subject to the Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) unless the provisions of that Act exempt its application. In the construction of the Projects, Grantee must comply with the requirements of the Prevailing Wage Act including, but not limited to: (a) paying the prevailing rate of wages required by the Illinois Department of Labor, or a court on review, to all laborers, workers and mechanics performing work with Grant Funds provided through this Agreement, (b) inserting into all contracts for such construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the Project must be paid to all laborers, workers, and mechanics performing work under this Award; and (c) requiring all bonds of contractors to include a provision as will guarantee the faithful performance of the prevailing wage clause as provided by contract.

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PART THREE – PROJECT-SPECIFIC TERMS

In addition to the uniform requirements in **PART ONE** and Grantor-Specific Terms in **PART TWO**, Grantor has the following additional requirements for this Project:

ARTICLE XXXVI REPORT DELIVERABLE SCHEDULE

36.1. <u>External Audit Reports</u>. External Audit Reports may be required. Refer to ARTICLE XII of this Agreement to determine whether you are required to submit an External Audit Report and the applicable due date.

36.2. <u>Annual Financial Reports</u>. Annual Financial Reports may be required. Refer to Paragraph 12.2 of this Agreement to determine whether you are required to submit Annual Financial Reports.

36.3. <u>Required Periodic Reports</u>. Below is the required periodic reporting schedule for this Award.

July 2024

- Quarterly Periodic Financial Report (07/30/2024) Covering Period of 05/01/2024 06/30/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (07/30/2024) Covering Period of 05/01/2024 06/30/2024; Send To: Grant Manager

October 2024

- Quarterly Periodic Financial Report (10/30/2024) Covering Period of 07/01/2024 09/30/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (10/30/2024) Covering Period of 07/01/2024 09/30/2024; Send To: Grant Manager

January 2025

- Quarterly Periodic Financial Report (01/30/2025) Covering Period of 10/01/2024 12/31/2024; Send To: Grant Manager
- Quarterly Periodic Performance Report (01/30/2025) Covering Period of 10/01/2024 12/31/2024; Send To: Grant Manager

April 2025

- Quarterly Periodic Financial Report (04/30/2025) Covering Period of 01/01/2025 03/31/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (04/30/2025) Covering Period of 01/01/2025 03/31/2025; Send To: Grant Manager

July 2025

- Quarterly Periodic Financial Report (07/30/2025) Covering Period of 04/01/2025 06/30/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (07/30/2025) Covering Period of 04/01/2025 06/30/2025; Send To: Grant Manager

October 2025

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- Quarterly Periodic Financial Report (10/30/2025) Covering Period of 07/01/2025 09/30/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (10/30/2025) Covering Period of 07/01/2025 09/30/2025; Send To: Grant Manager

January 2026

- Quarterly Periodic Financial Report (01/30/2026) Covering Period of 10/01/2025 12/31/2025; Send To: Grant Manager
- Quarterly Periodic Performance Report (01/30/2026) Covering Period of 10/01/2025 12/31/2025; Send To: Grant Manager

April 2026

- Quarterly Periodic Financial Report (04/30/2026) Covering Period of 01/01/2026 03/31/2026; Send To: Grant Manager
- Quarterly Periodic Performance Report (04/30/2026) Covering Period of 01/01/2026 03/31/2026; Send To: Grant Manager

June 2026

- Quarterly Periodic Financial Report (06/01/2026) Covering Period of 04/01/2026 04/30/2026; Send To: Grant Manager
- Quarterly Periodic Performance Report (06/01/2026) Covering Period of 04/01/2026 04/30/2026; Send To: Grant Manager
- End of grant Closeout Financial Report (06/15/2026) Covering Period of 05/01/2024 04/30/2026; Send To: Grant Manager
- End of grant Closeout Performance Report (06/15/2026) Covering Period of 05/01/2024 04/30/2026; Send To: Grant Manager

36.4. <u>Changes to Reporting Schedule</u>. Changes to the schedules for periodic reporting, the external audit reports and the annual financial reports do not require a formal modification to this Agreement pursuant to Paragraph 22.4 and ARTICLE XXX, and may be changed unilaterally by the Grantor if necessitated by a change in the project schedule or at the discretion of the Grantor. The Grantee may not modify the reporting deliverable schedules in ARTICLES X, XI, XII and XXXVI unilaterally, and must obtain prior written approval from Grantor or the Grant Accountability and Transparency Unit of the Governor's Office of Management and Budget, if applicable, to change any reporting deadlines.

ARTICLE XXXVII GRANT-SPECIFIC TERMS/CONDITIONS

37.1. <u>Funding</u>. If this Award is bond-funded, all expenditures shall be in accordance with all applicable bondability guidelines.

37.2. <u>Use of Real Property</u>. Grantee shall use any real property acquired, constructed or improved with Grant Funds pursuant to this Agreement to provide the programs and services specified herein for at least the Award Term stated in Paragraph 2.1. Grantee shall comply with the real property use and disposition requirements set forth in 2 CFR 200.311.

37.3. Projects Requiring External Sign-offs.

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 39 of 42 (1) Pursuant to applicable statute(s), this Award requires sign-off by the following State agency(ies). The status of the sign-off is indicated as of the date the Award is sent to the Grantee for execution:

AGENCY	SIGN-OFF RECEIVED	SIGN-OFF OUTSTANDING
 Illinois State Historic Preservation Office Illinois Dept. of Agriculture Illinois Dept. of Natural Resources Illinois Environmental Protection Agency NONE APPLICABLE		

While **any** external sign-off is outstanding, the provisions of Item (3), immediately below apply with respect to the disbursement of funds under this Award.

NOTE: The fact that a sign-off has been received in no way relieves the Grantee of its obligation to comply with any conditions or requirements conveyed by the applicable agency(ies) in conjunction with the issuance of the sign-off for the project funded under this Agreement.

(2) For projects subject to review by the Illinois Environmental Protection Agency (IEPA), the Grantee must, prior to construction, obtain a construction permit or "authorization to construct" from the IEPA pursuant to the provisions of the Environmental Protection Act, 415 ILCS 5/1 *et seq*.

(3) External Sign-Off Provisions:

- a.) The Project described in Exhibit A and funded under this Agreement is subject to review by the external agency(ies) indicated in Item (1) immediately above. Grantee must comply with requirements established by said agency(ies) relative to their respective reviews. Any requirements communicated to the Grantor shall be incorporated into this Agreement as follows: as an attachment to this Agreement (immediately following <u>PART THREE</u>) at the time of the Agreement execution. The Grantee is contractually obligated to comply with such requirements.
- **b.)** Grantee is responsible for coordinating directly with the applicable external agency(ies) relative to said reviews. Except as specifically provided below, the Grantor's obligation to disburse funds under this Agreement is contingent upon notification by the applicable agency(ies) that all requirements applicable to the project described in this Agreement have been satisfied. Upon receipt of said notification, disbursement of the Grant Funds shall be authorized in accordance with the provisions of Paragraph 2.3 herein.
- c.) Prior to notification of compliance by the applicable external agency(ies), the Grantee may request disbursement of funds **only** for the following purposes: administrative, contractual, legal, engineering, or architectural costs incurred which are necessary to allow for compliance by the Grantee of requirements established by the external agency(ies). FUNDS WILL NOT BE DISBURSED FOR LAND ACQUISITION OR ANY TYPE OF CONSTRUCTION OR OTHER ACTIVITY WHICH PHYSICALLY IMPACTS THE PROJECT SITE PRIOR TO RECEIPT BY THE GRANTOR OF THE REQUIRED NOTIFICATION FROM ALL APPLICABLE AGENCIES.
- **d.)** If external sign-offs are indicated in this paragraph 37.3, disbursement of Grant Funds (whether advance or scheduled) are subject to the restrictions set forth by the External Sign-Off Provisions of this paragraph 37.3. Upon receipt of all required sign-offs, the Grantor's

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 40 of 42 Accounting Division will be notified of authorization to disburse Grant Funds in accordance with the disbursement method indicated herein.

37.4. <u>Prevailing Wage Act Compliance</u>. The work to be performed under this Agreement is subject to the Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*). Grantee shall comply with all requirements of the Prevailing Wage Act, including but not limited to: (a) inserting into all contracts for construction a stipulation to the effect that not less than the prevailing rate of wages as applicable to the project shall be paid to all laborers, workers, and mechanics performing work under the Award and requiring all bonds of contractors to include a provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract and (b) all required reporting and documentation.

37.5. <u>Compliance with Illinois Works Jobs Program Act</u>. Grantee must comply with requirements in the Illinois Works Jobs Program Act (30 ILCS 559/Art. 20). For Awards with an estimated total project cost of \$500,000 or more, the Grantee will be required to comply with the Illinois Works Apprenticeship Initiative (30 ILCS 559/20-20 to 20-25) and all applicable administrative rules (*see* 14 Ill. Admin. Code Part 680). The "estimated total project cost" is a good faith approximation of the costs of an entire project being paid for in whole or in part by appropriated capital funds to construct a public work. Grantee must submit a Budget Supplement Form (available on the Grantor's website) to the Grantor within ninety (90) days of the execution of this Award. The goal of the Illinois Apprenticeship Initiative is that apprentices will perform either 10% of the total labor hours actually worked in each prevailing wage classification or 10% of the estimated labor hours in each prevailing wage classification, whichever is less. Of this goal, at least half of those apprenticeship hours shall be performed by graduates of the Illinois Works Preapprenticeship Program. Grantee is permitted to seek from the Grantor a waiver or reduction of this goal in certain circumstances pursuant to 30 ILCS 559/20-20(b). The Grantee must ensure compliance for the life of the entire project, including during the term of the Award and after the Term ends, if applicable, and will be required to report on and certify its compliance.

37.6. <u>Compliance with Business Enterprise Program</u>. If applicable to this Grant, Grantee acknowledges that it is required to comply with the Business Enterprise Program for Minorities, Females, and Persons with Disabilities Act ("BEP") (30 ILCS 575/0.01 *et seq.*), which establishes a goal for contracting with businesses that have been certified as owned and controlled by persons who are minority, female or who have disabilities. Grantee shall maintain compliance with the BEP Utilization Plan submitted in conjunction with the Agreement and shall comply with all reporting requirements.

Compliance with the Employment of Illinois Workers on Public Works Act. Grantee acknowledges 37.7. that it is required to comply with the Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01 et seq.) (the "Act"), which provides that whenever there is a period of excessive unemployment in Illinois (as defined by the Act), if the Grantee is using Grant Funds for (1) constructing or building any public works, or (2) performing the cleanup and on-site disposal of hazardous waste for the State of Illinois or any political subdivision of the State, then the Grantee shall employ at least 90% Illinois laborers on such project. Illinois laborers refers to any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident. Grantee may receive an exception from this requirement by submitting a request and supporting documents certifying that Illinois laborers are either not available or are incapable of performing the particular type of work involved. The certification must: (a) be submitted to the grant manager within the first quarter of the Award Term; (b) provide sufficient support that demonstrates the exception is met; (c) be signed by an authorized signatory of the Grantee; and (d) be approved by the grant manager. In addition, every contractor on a public works project or improvement or hazardous waste clean-up and on-site disposal project in this State may place on such work no more than 3 (or 6 in the case of a hazardous waste clean-up and on-site disposal project) of the contractor's regularly employed non-resident executive and technical experts.

37.8. <u>Interest on Grant Funds for this Award</u>. Because this Award may be subject to the Grantor's bondability guidelines, Grantee must comply with the interest requirements contained in Paragraph 4.7 and is not

State of Illinois GRANT AGREEMENT FISCAL YEAR 2024 Page 41 of 42 permitted to retain interest earned on Grant Funds, as stated in Paragraph 26.1, unless specifically notified by Grantor that Grantee may do so.

ARTICLE XXXVIII BOND FUNDED GENERAL GRANT PROVISIONS

38.1. <u>Bond Funded General Grant Provisions</u>. It is the intent of the State that all or a portion of the costs of this Project will be paid or reimbursed from the proceeds of tax-exempt bonds subsequently issued by the State.

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Information Technology Department

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5390 desplaines.org

MEMORANDUM

Date:	May 30, 2024
To:	Dorothy Wisniewski, City Manager
From:	Jarek Wojtaniec, Information Technology Director
Subject:	Software as a Service Solution for Tyler Technology ERP System

Issue: Migration of on-premises Tyler Technology Enterprise Resource Planning (ERP) system to a hosted cloud-based environment, also known as Software as a Service (SaaS) Technology.

Analysis: Tyler Technology ERP is an integrated system which manages all of the City's core functions, including financials, procurement, human resources, payroll, utility billing, etc. The City desires to migrate the current On-Premises ERP to a SaaS model which will offer the City enhanced security and compliance, accessibility and flexibility, automatic updates, and maintenance. Advantages of SaaS are as follows:

- **Cost Savings**: The SaaS model eliminates the need for upfront hardware acquisition and its cost, and cost of Operating Systems software licensing. Instead, SaaS operates on a subscription-based model, which will allow the City to pay only for what we use.
- **Backup and Recovery:** With the SaaS model, the responsibility for Databases maintenance, restore point, rebuilds and backups will fall on Tyler Technology, which in turn will reduce City's cost for in-house backup servers.
- **Scalability:** The SaaS model is highly scalable, which will allow the City to easily adjust our usage based on our demand.
- Accessibility and Flexibility: SaaS model applications are accessible via the internet, which means users will be able to access the system from anywhere with an internet connection.
- Automatic Updates and Maintenance: With the SaaS model, the responsibility for software updates and maintenance will fall on Tyler Technology. This will save time and City's internal IT resources, also it will ensure that City's users always have access to the latest features and security patches.
- **Reduced IT Overhead**: With migrating to the SaaS model, the City will reduce IT Department overhead costs. This will allow the internal IT team to focus on more strategic initiatives rather than routine maintenance tasks.
- Enhanced Security: The SaaS model provides enhanced cybersecurity measures to protect their systems and data. This will provide the City with access to enterprise-grade security features and expertise that could be cost-prohibitive to implement in-house.
- **Faster Time to Market**: The SaaS model will provide pre-built functionality and integrations as new technologies emerge, which will allow the City to deploy new applications and services more quickly.

Tyler Technologies, Inc. submitted a proposal to migrate the ERP system to a SaaS model in the amount of \$224,844.

Recommendation: We recommend approval of the Software as a Service Agreement with Tyler Technologies, Inc., One Tyler Drive, Yarmouth, Maine 04096 in the amount of \$224,844. The source of funding will be the Information Technology Fund, R&M Software.

Attachments: Resolution R-117-24 Exhibit A – Software as a Service Agreement



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

WHEREAS, Client and Tyler entered into an agreement dated December 16, 2010, pursuant to which Tyler granted Client certain perpetual licenses for Tyler Software ("Prior Agreement"), which Tyler Software the Client has been hosting on-premises; and

WHEREAS, Client desires to move the Tyler Software and all associated Client data to the cloud; and

WHEREAS, Tyler and Client desire to enter into this Software as a Service Agreement to set forth the parties' respective rights and responsibilities regarding the migration of the Tyler Software to the cloud and professional and SaaS Services provided by Tyler to Client under this Agreement related to the Tyler Software;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- "Agreement" means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as <u>Schedule 1</u> to <u>Exhibit B</u>.
- "Client" means the City of Des Plaines, Illinois.
- "Data" means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Users"** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.



- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have signed the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Functional Requirements"** means the functionality of the Tyler Software currently in use by and configured for the City under pre-existing agreements with Tyler.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as <u>E xhibit A</u>.
- **Invoicing and Payment Policy**" means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as <u>Exhibit B</u>.
- **"Order Form"** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **"Project"** means the work necessary to complete the migration of the City's existing onpremises Tyler Software, as configured, and all related City data, to a hosted cloud-based environment.
- "SaaS Fees" means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **"Scope of Services"** means the description of the services to be performed for the Project. The Scope of Services is attached as Exhibit D.
- **"SLA"** means the service level agreement. A copy of our current SLA is attached hereto as <u>Exhibit C</u>.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as <u>Schedule 1</u> to <u>Exhibit C</u>.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- "Third Party Products" means the Third Party Software and Third Party Hardware.
- **"Third Party SaaS Services"** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **"Third Party Services"** means the third party services, if any, identified in the Investment Summary.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties' products or services, as applicable.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.



- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Scope of Services and Investment Summary and licensed by us to you through this Agreement and the Prior Agreement with Tyler.
- "Vendor" means Tyler.
- "we", "us", "our" and similar terms mean Tyler.
- "you" and similar terms mean Client.

SECTION B – SAAS SERVICES

- 1. <u>Rights Granted</u>. We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(13). The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the terms and conditions of this Agreement including, without limitation, Section B(4). We will make any such software available to you for download.
- SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
- 3. <u>Ownership</u>.
 - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.
 - 3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
 - 3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.
- 4. <u>Restrictions</u>. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS



Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.

- 5. <u>Software Warranty</u>. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(13), below, the SLA and our then current Support Call Process.
- 6. <u>Functionality Replacement</u>. For a period of three (3) years from the initial term commencement date, if a new release of the Tyler Software removes functionality that was original provided as part of the SaaS Services, Tyler will provide alternative means for performing the same function, at no additional cost to Client beyond the payment of the annual SaaS Fees.

7. SaaS Services.

- 7.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center. You will be hosted on shared hardware in a Tyler data center or in a third-party data center. Any term or condition contained herein that references a Tyler data center shall also apply to any third-party data center. The data center, including any third-party data center, will be located within the contiguous United States of America.
- 7.2 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective ("RPO") of 24 hours and a Recovery Time Objective ("RTO") of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.
- 7.3 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software.



Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.

- 7.4 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.
- 7.5 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.
- 7.6 We provide secure Data transmission paths between each of your workstations and our servers.
- 7.7 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.
- 7.8 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at https://www.tylertech.com/about-us/compliance, and in the event of any change in our status, will comply with applicable notice requirements.

SECTION C – PROFESSIONAL SERVICES

- 1. <u>Professional Services</u>. We will provide you the various implementation-related services itemized in the Investment Summary.
- 2. <u>Professional Services Fees</u>. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.
- 3. <u>Additional Services</u>. The Investment Summary contains, and the Scope of Services describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the



addendum or change order will be valid for thirty (30) days from the date of the quote. No additional services will be deemed authorized without Client's written approval clearly stating the additional services to be performed and the additional cost.

- 4. <u>Cancellation</u>. If travel is required, we will make all reasonable efforts to schedule travel for our personnel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
- 5. <u>Services Warranty</u>. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
- 6. <u>Reserved</u>
- 7. <u>Background Checks</u>. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.
- 8. Personnel.
 - 8.1 Tyler shall assign an adequate staff of personnel consistent with the services warranty for the Project and any professional services to be provided pursuant to an Order From. In the event Tyler personnel are not providing services consistent with our services warranty or are otherwise negatively impacting the Project, Client will notify Tyler of that deficiency and Tyler will be given a reasonable opportunity to correct the deficiency. Once Tyler has had a reasonable opportunity to correct the deficiency by the Client persists, then Client may provide written notice to Tyler, requesting that the Tyler personnel be removed. Upon that written request and demonstration of good cause, Tyler will identify a replacement within a commercially reasonable time.
 - 8.2 Upon request from Client, Tyler will notify Client of the personnel assigned to perform professional services pursuant to an Order Form prior to the commencement of the professional services. Tyler will reasonably accommodate additional requests for information regarding personnel assigned to the Project or other professional services provided pursuant to an Order Form.
- 9. <u>Compliance with Rules and Regulations</u>. We agree that all persons working for or on behalf of Tyler whose duties bring them upon your premises shall obey the rules and regulations that are established by you for such access and shall comply with the reasonable directions of your representatives. Any employee involved in egregious or unlawful misconduct while on Client premises may be subject to immediate removal by the Client's Safety Officer or by local law enforcement. The parties agree and understand that the Project is anticipated to be conducted remotely.



10. <u>Site Access and Requirements</u>. Tyler and any of its employees, agents, or subcontractors performing Services shall be permitted to enter upon Client property in connection with the performance of the Services, subject to those reasonable rules established by the Client and provided to Tyler in advance. Tyler shall provide advance notice to the Client whenever applicable, of any such intended entry. Consent to enter upon a Client facility given by the Client shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Client. Tyler and its employees, agents, and subcontractors shall have the right to use only those facilities of the Client. Tyler shall use, and shall cause each of its employees, agents, and subcontractors to use, a commercially reasonable degree of care when entering upon any property or facility owned by Client in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of the Agreement, including without limitation, the indemnification provisions contained in the Agreement. The parties agree and understand that the Project is anticipated to be conducted remotely.

Except to the extent caused by Client's negligence, gross negligence, recklessness, or willful misconduct, Client shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Tyler or its employees, agents, or subcontractors.

- 11. <u>Client Assistance</u>. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
- 12. Project Acceptance.
 - 12.1 The Client will use the following acceptance process for the Project.
 - 12.2 Client will have a maximum of a thirty (30) calendar day "Test Period" to test the System in a live production hosted environment and report documented Defects to Tyler. If there are no Defects reported during the Test Period the Client shall issue Project Acceptance, or if Client does not report any Defects (as defined in Tyler's Support Call Process) during the Test Period then the Project Acceptance will be deemed issued. If Client believes there is a documented Defect during the Test Period, Client will so notify Tyler in writing with supporting documentation. Tyler will correct the Defect(s) or provide a mutually agreeable plan for future resolution of any Defect(s) consistent with Tyler's Support Call Process. Upon resolution of a critical or high-priority (Level 1 or Level 2) Defect (as defined in Tyler's Support Call Process), Client may re-perform testing for a maximum of five (5) business days.
- 13. <u>Maintenance and Support</u>. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:



- 13.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);
- 13.2 provide support during our established support hours;
- 13.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
- 13.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
- 13.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (b) other consulting services; or (d) support outside our normal business hours as listed in our thencurrent Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

SECTION D – THIRD PARTY PRODUCTS

- 1. <u>Third Party Hardware</u>. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
- 2. <u>Third Party Software</u>. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.



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3. Third Party Products Warranties.

- 3.1 We are authorized by each Developer to grant access to the Third Party Software.
- 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
- 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
- 4. <u>Third Party Services</u>. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

- 1. <u>Invoicing and Payment</u>. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).
- 2. <u>Invoice Disputes</u>. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within thirty (30) days of notice of our intent to do so.

SECTION F - TERM AND TERMINATION

- <u>Term</u>. This Agreement is effective as of the Effective Date. The initial term of this Agreement is
 equal to the number of years indicated for SaaS Services in Exhibit A, commencing on July 1, 2024,
 unless earlier terminated as set forth below. If no duration is indicated in Exhibit A, the initial term
 is one (1) year. Upon expiration of the initial term, this Agreement will renew automatically for
 additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by
 either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to
 access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.
- 2. <u>Termination</u>. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of



Exhibit A

termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).

- 2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
- 2.2 <u>For Cause</u>. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).
- 2.2- <u>Insolvency or Bankruptcy</u>. If at any time a voluntary petition in bankruptcy shall be filed against the Vendor and shall not be dismissed within thirty (30) days, or if the Vendor shall take advantage of any insolvency law, or if a receiver or trustee of the Vendor's property shall be appointed and such appointment shall not be vacated within thirty (30) days, the Client shall have the right to terminate the contract by giving thirty (30) days' notice in writing of such termination.
- 2.3 <u>Force Majeure</u>. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
- 2.4 <u>Lack of Appropriations</u>. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Client's Corporate Authorities for performance under the Agreement, the City may unilaterally terminate the Agreement upon thirty (30) days written notice to Tyler. Client will not be entitled to a refund or offset of previously paid, but unused SaaS Fees.
- 2.5 <u>For Convenience</u>. You may terminate this Agreement for convenience on thirty (30) days' prior written notice.
- 3. <u>Transition Services</u>. In connection with the termination of this Agreement for any reason, and only upon the execution of a mutually agreed change order or addendum, Tyler shall use commercially reasonable efforts to accomplish an adequate and timely transition from Tyler to the Client, or to any replacement providers designated by the Client (a "Disentanglement"). The parties shall reasonably cooperate during Disentanglement. Client shall reimburse Tyler for Disentanglement services provided by Tyler at Tyler's then-current rates, plus reasonable costs and expenses, as set forth in the parties' executed change order or addendum.
- 4. <u>Return of Data After Termination or Expiration</u>. Regardless of whether a change order or addendum is entered into for Disentanglement purposes, upon termination or expiration of this Agreement, we will unconditionally provide all of your Data, including copies of your Data, in the format requested by you, and if that format is not feasible, a commercially reasonable format that is agreeable to both parties with 30 days. Unless otherwise noted we will not keep any of your data and, if any data remains for any reason such as may be required by standard backup policies and procedures or for litigation purposes, we agree not to use or allow a third-party to use your Data for any purpose.



SECTION G - INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. <u>General Indemnification</u>.

- 2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of a law applicable to our performance under this Agreement; or (c) our violation of section H(17) of this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by your willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement; or (c) your violation of section H(17) of this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.



- 2.3 <u>No Personal Liability of City Officials or Personnel</u>. No official, officer, employee, attorney, or agent of Client shall be personally charged by Tyler or any subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Tyler or any subcontractors provided the basis for charge is conduct within the scope of employment.
- 3. <u>DISCLAIMER</u>. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.
- 4. <u>LIMITATION OF LIABILITY</u>. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED AN AMOUNT EQUAL TO TWO (2) TIMES THE AMOUNT PAID FOR PROFESSIONAL SERVICES AND SAAS FEES DURING THE FIRST 12 MONTHS OF THIS AGREEMENT AS SET FORTH ON THE INVESTMENT SUMMARY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).
- 5. <u>EXCLUSION OF CERTAIN DAMAGES</u>. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6. <u>Insurance</u>. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

- <u>Additional Products and Services</u>. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
- 2. <u>Optional Items</u>. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.



Exhibit A

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- 3. <u>Dispute Resolution</u>. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties may agree to participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved within sixty (60) days of the first mediation session, if mediation is agreed upon, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
- 4. <u>Taxes</u>. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
- 5. <u>Nondiscrimination</u>. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
- <u>E-Verify</u>. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
- 7. <u>Subcontractors</u>. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
- 8. <u>Binding Effect; No Assignment</u>. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
- 9. <u>Force Majeure</u>. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within fifteen (15) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.



- 10. <u>No Intended Third Party Beneficiaries</u>. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
- 11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
- 12. <u>Severability</u>. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
- 13. <u>No Waiver</u>. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
- 14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
- 15. <u>Notices</u>. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
- 16. <u>Client Lists</u>. You agree that we may identify you by name in client lists.
- 17. <u>Confidentiality</u>. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers, dates of birth, etc.), bank information and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its



employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
- (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
- (c) a party receives from a third party who has a right to disclose it to the receiving party; or
- (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
 For the purposes of this Agreement, this Agreement is not Confidential Information except as specifically noted herein.
- 18. <u>Quarantining of Client Data</u>. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice; provided, however, that within 24 hours of any quarantine, we will provide the latest clean copy of the your data so that your operations will be minimally interrupted. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate with you the restoration of your Data to a non-quarantined environment. In the event your Data must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.
- 19. <u>Business License</u>. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
- 20. <u>Governing Law</u>. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
- 21. <u>Multiple Originals and Authorized Signatures</u>. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
- 22. <u>Cooperative Procurement</u>. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.



- 23. <u>Data & Insights Solution Terms</u>. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at <u>https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service</u>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.
- 24. <u>Compliance with Laws</u>. Tyler, in the performance of the services, will comply with all applicable state and federal statutes, ordinances, rules, and regulations. The fees in the Investment Summary are based, in part, on the cost of compliance with applicable laws existing as of the Effective Date. Should laws applicable to Tyler's performance under the Agreement change post-signature, Tyler reserves the right to seek, but the City is not obligated to approve, a change order for the additional work, time, and/or cost that may be required to comply with the new law, ordinance, or regulation. Further, Tyler shall have a written sexual harassment policy in compliance with Section 2-105(a)(4) of the Illinois Human Rights Act. Every provision of law required by applicable law to be inserted into the Agreement shall be deemed to be inserted herein.
- 25. <u>Conflict of Interest</u>. Tyler certifies that, to the best of its knowledge: (1) no elected or appointed Client official, employee or agent has a personal financial interest in the business of the Proposer or in the Agreement, or has personally received payment or other consideration for the Agreement, except for the possibility of a bona fide employee of Tyler receiving a sales commission on contract execution; (2) as of the Effective Date of the Agreement, neither Tyler nor any person employed or associated with Tyler has any interest that would conflict in any manner or degree with the performance of the obligations under the Agreement; and (3) neither Tyler nor any person employed by or associated with Tyler shall at any time during the term of the Agreement obtain or acquire any interest that would conflict in any manner or the obligations under the Agreement.
- 26. <u>No Collusion</u>. Tyler certifies that the Tyler is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless Tyler 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 (2) 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 Agreement is made without collusion with any other person, firm, or corporation.
- 27. <u>Patriot Act Compliance</u>. Tyler certifies to Client 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 Tyler is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. Tyler further certifies to Client that Tyler 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 the Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.



28. <u>Contract Documents</u>. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Service Level Agreement
	Schedule 1: Support Call Process
Exhibit D	Scope of Services

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.	City of Des Plaines, IL
Ву:	Ву:
Name:	Name:
Title:	Title:
Date:	Date:
<u>A ddress for Notices</u> : Tyler Technologies, Inc. One Tyler Drive Yarmouth, ME 04096 Attention: Chief Legal Officer	<u>Address for Notices</u> : City of Des Plaines 1410 Miner Street Des Plaines, IL 60016 <mark>Attention</mark> :





Exhibit A Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement. In the event of conflict between the Agreement and terms in the Comments section of this Investment Summary, the language in the Agreement will prevail.

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Quoted By:
Quote Expiration:
Quote Name:

Dudley Wellington 3/31/24 Des Plaines- Hosting

Sales Quotation For:

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City of Des Plaines 1420 Miner St Des Plaines IL 60016-4498

Tyler Annual Software - SaaS

Description	Annual
New World ERP	
Time & Attendance	
Time & Attendance Mobile Access License	\$ 2,464
Time & Attendance	\$ 10,928
Advanced Scheduling Mobile	\$ 1,930
Advanced Scheduling	\$ 8,196
Financials	
Accounting/General Ledger	\$ 28,441
Purchase Orders	\$ 7,003
Contract Management	\$ 3,502
Fixed Assets	\$ 3,502
Integrated Credit Card Processing	\$ 5,219
Third Party Receivables	\$ 3,034
Work Orders	\$ 7,080
Site License	\$ 0
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LINE-ITEM PRICING ON THIS PAGE IS A TRADE SECRET AND CONFIDENTIAL INFORMATION OF TYLER TECHNOLOGIES, INC. ("Total" Pricing is not confidential)	Exhibit A
eUtilities	\$ 2,897
ePayments	\$ 3,938
eEmployee	\$ 10,504
eBase	\$ 7,003
UM Analytics	\$ 4,376
HR Analytics	\$ 4,376
FM Analytics	\$ 5,252
Decision Support Base Datatmart	\$ 0
PC Cash Register Interface	\$ 5,219
Auto Meter Interface	\$ 3,063
Time and Attendance Interface	\$ 4,376
Position Budgeting	\$ 4,376
Personnel Action Processing	\$ 4,376
Benefits Admin	\$ 3,502
Requisitions	\$ 3,502
Project Accounting	\$ 3,502
Misc Billing and Receivables	\$ 3,502
Bank Rec	\$ 2,625
Payroll/HR	
Payroll/HR	\$ 24,066
Benefits Tracking	\$ 4,376
Third Party Applicant Interface	\$ 709
Utilities	
Utility Billing (Water/Sewer Base)	\$ 19,690
Meter and Device Inventory	\$ 4,376
Service Order Processing	\$ 7,439
TOTAL	\$ 218,344

Exhibit A

Fixed Fee Services

Description	Units	Price	Maintenance
New World ERP			
ERP Insights			
Saas Flip Install Fee	1	\$ 4,000	\$0
Other Services			
Project Planning Services for SaaS Flips	1	\$ 2 <i>,</i> 500	\$ 0
TOTAL		\$ 6,500	\$ 0

Summary	One Time Fees	Recurring Fees
Total Tyler Software	\$ 0	\$ 0
Total SaaS	\$ 0	\$ 218,344
Total Tyler Services	\$ 6,500	\$ 0
Total Third-Party Hardware, Software, Services	\$ 0	\$ 0
Summary Total	\$ 6,500	\$ 218,344
Contract Total	\$ 224,844	

Any acquisition of clocks and/or clock maintenance is subject to the following terms:

Exhibit A

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms, subject to payment terms in an agreement, amendment, or similar document in which this sales quotation is included:

• License fees for Tyler and third-party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available accessible.

• Fees for hardware are invoiced upon delivery.

• Fees for year one of hardware maintenance are invoiced upon delivery of the hardware.

• Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software accessible to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the agreement, with renewals invoiced annually thereafter in accord with the Agreement.

• Fees for services included in this sales quotation shall be invoiced as indicated below.

o Implementation and other professional services fees shall be invoiced as delivered.

o Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.

o Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into

Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and material basis. "

o Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where Project Planning Services are

provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears,

beginning on the first day of the month immediately following initiation of project planning.

o If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.

o Notwithstanding anything to the contrary stated above, the following payment terms shall apply to fees specifically for migrations: Tyler will invoice Client 50% of any Migration

Services Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product

suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Annual SaaS Fees will be invoiced upon availability of the hosted environment.

• Expenses associated with onsite services are invoiced as incurred.

Any SaaS or hosted solutions added to an agreement containing Client-hosted Tyler solutions are subject to Tyler's SaaS Services terms found here:

https://www.tylertech.com/terms/tyler-saas-services.

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Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval:	 Date:	
Print Name:	 P.O.#:	



Exhibit B Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

 <u>SaaS Fees</u>. SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement and prorated through December 31, 2024. Thereafter, annual SaaS Fees shall be invoiced in advance from a period of January 1 through December 31 of each year. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.

2. Other Tyler Software and Services.

- 2.1 *Implementation and Other Professional Services (including training)*: Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
- 2.2 *Consulting Services*: If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
- 2.3 *Conversions*: Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
- 2.4 Requested Modifications to the Tyler Software: Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.
- 2.5 *Other Fixed Price Services*: Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.



- 2.6 *Web Services*: Annual fees for web services are payable in advance, commencing upon the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.
- 2.7 Annual Services: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

3. Third Party Products.

- 3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.
- 3.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.
- 3.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.
- 3.4 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary. For the avoidance of doubt, Finite Matters will invoice Client directly for any services fees for Pattern Stream.
- 3.5 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.
- <u>Transaction Fees</u>. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.
- 5. <u>Expenses</u>. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.
- 6. <u>Credit for Prepaid Maintenance and Support Fees for Tyler Software</u>. Client will receive a credit for the maintenance and support fees prepaid for the Tyler Software for the time period commencing on the first day of the SaaS Term.

<u>Payment</u>. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting <u>A R@tylertech.com</u>.





Exhibit B Schedule 1 Business Travel Policy

- 1. Air Travel
 - A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not

reimbursable.



2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.



Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

<u>Return Day</u>

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

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5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.





Exhibit C SERVICE LEVEL AGREEMENT

I. <u>Agreement Overview</u>

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Actual Attainment: The percentage of time the Tyler Software is available during a calendar month, calculated as follows: (Service Availability – Downtime) ÷ Service Availability.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

Emergency Maintenance Window: (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

Planned Downtime: Downtime that occurs during a Standard or Emergency Maintenance window.

Service Availability: The total number of minutes in a calendar month that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure. Service Availability only applies to Tyler Software being used in the live production environment.

Standard Maintenance: Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

III. Service Availability

a. <u>Your Responsibilities</u>

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.



b. <u>Our Responsibilities</u>

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, denial of service attack or Force Majeure). We will also work with you to resume normal operations.

c. <u>Client Relief</u>

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS Fees paid for the calendar month.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable month. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Credits are only payable when Actual Attainment results in eligibility for credits in consecutive months and only for such consecutive months.

Client Relief Schedule	
Actual Attainment	Client Relief
99.99% - 98.00%	Remedial action will be taken
97.99% - 95.00%	4%
Below 95.00%	5%

IV. Maintenance Notifications

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable, that the Tyler Software will be unavailable during the maintenance window.





Exhibit C Schedule 1 Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

- (1) On-line submission (portal) for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most "how-to" and configuration- based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
- (2) Email for less urgent situations, users may submit emails directly to the software support group.
- (3) Telephone for urgent or complex questions, users receive toll-free, telephone software support.

* Channel availability may be limited for certain applications.

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website <u>www.tylertech.com</u> for accessing client tools, documentation, and other information including support contact information.
- (2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
- (3) Tyler Community provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (4) Tyler University online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of



such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler's Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client's needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a "confirmed support incident" mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets [*]
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.



Priority Level	Characteristics of Support Incident	Resolution Targets*
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non- critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

*Response and Resolution Targets may differ by product or business need

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect. *Remote Support Tool*

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.





Exhibit D Scope of Work

Introduction

Services Needed

Implementation services related to the going from on-premises to SaaS.

Background

The City of Des Plaines, IL is currently using New World ERP for Financials and HR/Payroll is moving from an on-premises installation to a SaaS/Hosting installation.

Deliverables

- Provide, Configure, and maintain in coordination with Des Plaines IT staff to facilitate secure private connection to the hosted servers and network.
- Ensure bidirectional access to Des Plaines to replicate data to and from On-Premises to the Tyler Hosted databases through a secure connection.
- Application Support.
- Technical Support.
- Maintain MS-SQL Database in accordance with industry best practices.
- Maintain MS Server OS and implement Microsoft upgrades and patching in accordance with industry best practices.
- NWERP Upgrades.
- NWERP Patching.
- Nightly backups of Production Servers.
- SSL Maintenance and Renewals.
- Maintain the current AD integrated logins that are currently used in the Tyler onprem implementation.
- Test/Dev Environment for both production cluster and test environment for major feature releases to minimize impact on production Test and Production servers.



CITY OF DES PLAINES

RESOLUTION R - 117 - 24

A RESOLUTION APPROVING AN AGREEMENT WITH TYLER TECHNOLOGIES, INC. FOR THE CLOUD MIGRATION AND IMPLEMENTATION OF ENTERPRISE PLANNING RESOURCES SYSTEM.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the City currently uses an enterprise resource planning system from Tyler Technologies, Inc. ("*ERP*"); and

WHEREAS, the City desires to migrate the ERP and associated data from the current onpremises system to a hosted cloud-based environment, also known as Software as a Service ("SaaS") technology; and

WHEREAS, Tyler Technologies, Inc. ("Vendor") submitted a proposal for the migration of the ERP to the SaaS ("Software") and the professional services necessary for migration, implementation, management, and support services for the Software (collectively, "Services") in the not-to-exceed amount of \$224,844; and

WHEREAS, the City has determined that the Software best meets the City's needs and is compatible with existing ERP being used by the City; and

WHEREAS, in accordance with Chapter 10 of Title 1 of the City Code of the City of Des Plaines and the City's purchasing policy, the City has determined that competitive bidding is not required for the procurement of the Software and Services because Vendor is the sole source provider of Software and the Services; and

WHEREAS, the City has sufficient funds in the Information Technologies Fund for use by the Information Technology Department during the 2024 fiscal year to purchase the Software and the Services; and

WHEREAS, the City desires to enter into an agreement with Vendor for the procurement of Software and the performance of Services in the total not-to-exceed amount of \$224,844 ("Agreement"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Agreement with Vendor for the procurement of the Software and Services in accordance with this Resolution; **NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AGREEMENT. The City Council hereby approves the Agreement with Vendor in the not to exceed amount of \$224,844 in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the final Agreement only after receipt by the City Clerk of at least two executed copies of the Agreement from Vendor; provided, however, that if the City Clerk does not receive such executed copies of the Agreement from Vendor 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.

<u>SECTION 4</u>: <u>EFFECTIVE DATE</u>. This Resolution shall be in full force and effect from and after its passage and approval according to law.

 PASSED this _____ day of _____, 2024.

 APPROVED this _____ day of _____, 2024.

 VOTE: AYES
 NAYS
 ABSENT

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Resolution Approving an Agreement with Tyler Technologies for SaaS Model

COMMUNITY AND ECONOMIC Development department

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date:	June 3, 2024
To:	Dorothy Wisniewski, City Manager
From:	Jeff Rogers, Director of Community & Economic Development Jour
Subject:	Consideration of an Ordinance granting an Amendment to an existing Conditional Use Permit to allow motor vehicle sales and a trade contractor use located at 1628 Rand Road
Issue:	The petitioner is requesting the following items: (i.) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii.) a conditional use for a motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

Owner: Art Investment, LLC, 2020 Berry Lane, Des Plaines, IL 60018

Petitioner: Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018

Case Number: 24-004-CU

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Real Estate Index Number: 09-16-104-022-0000

Ward:	#1, Alderman Mark A. Lysakowski
Existing Zoning:	C-3, General Commercial District
Existing Land Use:	Multi-tenant commercial building including a trade contractor granite countertop business and cabinet business
Surrounding Zoning:	 North: R-1, Single Family Residential District South: C-3, General Commercial District East: C-1, Neighborhood Shopping / R-1, Single Family Residential Districts West: C-3, General Commercial District

Surrounding Land Uses:	 North: Single-Family Residences South: Columbus Foods & Liquors, Vazquez Dental, Castro Hand Car Wash, and 7-Eleven/Mobil (Commercial) East: A Mother's Touch Learning Academy (Commercial) West: Our Lady of Fatima Center (Commercial)
Street Classification:	Rand Road is classified as a Minor Arterial road and Grove Avenue is classified as a Local street.
Comprehensive Plan:	The Comprehensive Plan designates this site as Commercial.
Zoning/Property History:	The subject property was annexed into the City in 1965. A conditional use was approved in 2021 via Ordinance Z-36-21 to permit a trade contractor use at this address. A subsequent amendment to the conditional use was approved in 2022 via Ordinance Z-26-22 and a zoning variation for signage was approved via Ordinance Z-27-22. The applicant has been working with the City to resolve several outstanding issues associated with the expiration of the 2022 conditional use ordinance as well as several minor code violations. This application is part of the resolution.
Request Summary:	The petitioner, Urszula Topolewicz, requests Conditional Use Permits
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Request Summary: The petitioner, Urszula Topolewicz, requests Conditional Use Permits to amend an existing trade contractor use and operate a proposed motor vehicle sales use in adjacent tenant spaces both at 1628 Rand Road. In accordance with the proposed motor vehicles sales use, the applicant would perform vehicle maintenance and detailing of vehicles offered for sale.

PZB Recommendation and Conditions: The case was published for consideration by the Planning & Zoning Board (PZB) at their regular meeting on January 23, 2024 but was continued to February 23, 2024 at which time the public hearing was opened. The PZB provided requests for improved accuracy among the exhibits provided and requested the applicant address several concerns relating to proposed operations and site plan design. The PZB subsequently continued the case to several subsequent meetings until April 23, 2024 at which time a quorum was not achieved. The case was renoticed for a public hearing on May 14, 2024. The PZB considered the applicant's revised plans and materials during the public hearing and recommended approval *by a 5-0 vote* of the applicant's request with several conditions.

Pursuant to Sections 12-3-4.D.4 and 12-3-7.D.4 of the Zoning Ordinance, the City Council may vote to approve, approve with modifications, or deny the request. The Council has final authority over the conditional use. A draft ordinance, Z-10-24, is attached and would approve an amendment to the Conditional Use. Should the City Council vote to approve the request, the PZB recommends the following conditions be included.

Conditions of Approval:

- 1. The petitioner shall implement all site improvements shown on the proposed undated site plan and any amendments required by the Planning & Zoning Board.
- 2. The applicant shall provide plans and specifications for review and secure permits for all site work governed by city codes and ordinances (pavement, exterior doors/window systems, mechanical/electrical/plumbing/structural, civil engineering, etc.). All proposed improvements and modifications shall be in full compliance with all applicable codes and ordinances.
- 3. No materials shall be stored outside of the extents of the proposed privacy fence enclosure.
- 4. All outdoor storage and/or displays shall be permissible only in full compliance with the requirements of Title 14 of the Municipal Code including raising of stored materials above the base flood elevation (BFE).
- 5. Display and storage of vehicles or materials shall be permissible in designated areas on private property only and shall not be permissible within required drive aisles or customer parking stalls, or within the public right-of-way. All motor vehicles stored on the site must be operable and stored on a dust-free, hard surface.
- 6. The applicant shall coordinate with the City regarding the assignment of unique unit addresses for the two tenant spaces comprising the existing building upon the property.
- 7. No more than sixteen (16) motor vehicles may be displayed for sale on the Subject Property at one time. Through signs, striping, or combination, these sixteen (16) spaces should be identified and reserved. Adding additional motor vehicle sales spaces would require an amendment to the Conditional Use Permits. Sufficient parking spaces to meet the minimum off-street parking requirements for the Proposed Uses must be provided on the Subject Property at all times.
- 8. Deliveries of vehicles by flatbed truck shall be scheduled during business hours and area within the extents of the storage area shall be maintained free from obstructions to facilitate three-point turnarounds for trucks so that no reversing into Rand Road will occur.

Attachments:

- Attachment 1: Ordinance Z-36-21
- Attachment 2: <u>Draft</u> Ordinance Z-26-22
- Attachment 3: Ordinance Z-27-22
- Attachment 4: Location Map
- Attachment 5: Site and Context Photos
- Attachment 6: Plat of Survey
- Attachment 7: Project Narrative
- Attachment 8: Petitioner's Reponses to Standards
- Attachment 9: Excerpt from Minutes of the January 23, 2024 Planning & Zoning Board Meeting
- Attachment 10: Excerpt from Minutes of the February 13, 2024 Planning & Zoning Board Meeting
- Attachment 11: Excerpt from Minutes of the March 12, 2024 Planning & Zoning Board Meeting
- Attachment 12: Excerpt from Minutes of the April 9, 2024 Planning & Zoning Board Meeting

Attachment 13: Excerpt from Draft Minutes of the May 14, 2024 Planning & Zoning Board Meeting

Ordinance Z-10-24

Exhibit A:	Site Plan
Exhibit B.	Floor Plan
Exhibit C:	Unconditional Agreement and Consent

CITY OF DES PLAINES

ORDINANCE Z - 36 - 21

AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A TRADE CONTRACTOR ESTABLISHMENT AT 1628 RAND ROAD, DES PLAINES, ILLINOIS.

WHEREAS, Peter Topolewick ("*Petitioner*") is the lessee of the property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*"); and

WHEREAS, the Subject Property is located in the C-3 General Commercial District of the City ("C-3 District"); and

WHEREAS, the Subject Property is improved with an one-story single-tenant commercial building ("Building"); and

WHEREAS, the Petitioner desires to locate a trade contractor establishment on the Subject Property; and

WHEREAS, pursuant to Section 12-7-3.K of the City of Des Plaines Zoning Ordinance of 1998, as amended ("Zoning Ordinance"), the operation of a trade contractor establishment is permitted in the C-3 District only with a conditional use permit; and

WHEREAS, Petitioner submitted an application to the City of Des Plaines Department of Community and Economic Development ("*Department*") for a conditional use permit to allow a trade contractor establishment on the Subject Property ("*Conditional Use Permit*"), in accordance with Sections 12-7-3.F.3 and 12-7-3.K of the Zoning Ordinance; and

WHEREAS, the Subject Property is owned by Elliott Kratz ("Owner"), who has consented to the Petitioner's application; and

WHEREAS, the Petitioner's application was referred by the Department to the Planning and Zoning Board of the City of Des Plaines ("PZB") within 15 days after the receipt thereof; and

WHEREAS, within 90 days from the date of the Petitioner's application a public hearing was held by the PZB on May 11, 2021 pursuant to notice published in the *Des Plaines Journal* on April 21, 2021; and

WHEREAS, notice of the public hearing was mailed to all property owners within 300 feet of the Subject Property; and

WHEREAS, during the public hearing, the PZB heard testimony and received evidence with respect to how the Petitioner intended to satisfy and comply with the applicable provisions of the Zoning Ordinance; and

WHEREAS, pursuant to Section 12-3-4 of the Zoning Ordinance, the PZB filed a written report with the City Council on May 12, 2021, summarizing the testimony and evidence received by the PZB and stating the Board's recommendation, by a vote of 5-0, to approve the Petitioner's application for the Conditional Use Permit subject to certain terms and conditions; and

WHEREAS, the Petitioner made certain representations to the PZB with respect to the proposed Conditional Use Permit, which representations are hereby found by the City Council to be material and upon which the City Council relies in granting this request for the Conditional Use Permit; and

WHEREAS, the City Council has considered the written report of the PZB, the applicable standards for conditional use permits set forth in the Zoning Ordinance, and the Community and Economic Development Staff Memorandum dated April 30, 2021, including the attachments and exhibits thereto, and has determined that it is in the best interest of the City and the public to grant the Petitioner's application in accordance with the provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des

Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1. RECITALS. The recitals set forth above are incorporated herein by

reference and made a part hereof, the same constituting the factual basis for this Ordinance.

SECTION 2. LEGAL DESCRIPTION OF SUBJECT PROPERTY. The Subject

Property is legally described as follows:

LOTS 14 TO 18, BOTH INCLUSIVE, (EXCEPT THE SOUTHWESTERLY 17.0 FEET THEREOF) IN BLOCK 3 IN RIVER-RAND ROAD SUBDIVISION OF LOTS 1 TO 8, INCLUSIVE, IN BLOCK 18 (OR BENNET BLOCK) AND LOT 1 TO 13, EXCLUSIVE IN, BLOCK 18 (OR RAND BLOCK) IN PARK SUBDIVISION OF PARTS OF SECTIONS 16 AND 17, TOWNHSIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

PIN: 09-16-104-022-0000

Commonly known as: 1628 Rand Road, Des Plaines, Illinois.

SECTION 3. CONDITIONAL USE PERMIT. Subject to and contingent upon the

conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City

Council grants the Petitioner a Conditional Use Permit to allow the operation of a trade contractor

establishment on the Subject Property. The Conditional Use Permit granted by this Ordinance is consistent with and equivalent to a "special use" as referenced in Section 11-13-25 of the Illinois Municipal Code, 65 ILCS 5/11-13-25.

SECTION 4. CONDITIONS. The Conditional Use Permit granted in Section 3 of this Ordinance shall be, and is hereby, expressly subject to and contingent upon the following conditions, restrictions, limitations, and provisions:

A. <u>Compliance with Law and Regulations</u>. The development, use, operation, and maintenance of the Subject Property, by the Petitioner must comply with all applicable City codes and ordinances, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance.

B. <u>Compliance with Plans</u>. Except for minor changes and site work approved by the City Director of Community and Economic Development in accordance with all applicable City standards, the development, use, operation, and maintenance of the Subject Property by the Petitioner must comply with the following plans as may be amended to comply with Section 4.C of this Ordinance:

1. That certain "Project Narrative" prepared by Petitioner, consisting of one sheet, and undated, attached to and by this reference made a part of this Ordinance as **Exhibit A**; and

2. That certain "Site Plan/Floor Plan" submitted by the Petitioner, consisting of one sheet, and undated, attached to and by this reference made a part of, this Ordinance as **Exhibit B**.

C. <u>Additional Conditions</u>. The development, use, and maintenance of the Subject Property shall be subject to and contingent upon the following conditions:

 The Petitioner must revise the Site Plan to include landscape details in conformance with Section 12-10 of the Zoning Ordinance within 60 days of City Council approval of this Ordinance.

2. That an eight-foot-tall wood privacy fence must be installed along the north property line of the Subject Property in conformance with Section 12-8-2 of the Zoning Ordinance within 60 days of City Council approval of this Ordinance.

3. Storage of commercial vehicles or materials within the required drive aisles or customer parking spaces is prohibited at all times on the Subject Property.

 Outdoor storage of raw materials or fabricated goods is prohibited at all times on the Subject Property.

SECTION 5. RECORDATION; BINDING EFFECT. A copy of this Ordinance must be recorded in the Office of the Cook County Recorder of Deeds. This Ordinance and the privileges, obligations, and provisions contained herein run with the Subject Property and inure to the benefit of, and are binding upon, the Petitioner and Owner and their respective personal representatives, successors, and assigns, including, without limitation, subsequent purchasers of the Subject Property.

SECTION 6. NONCOMPLIANCE.

A. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of, any of the provisions of this Ordinance shall be fined not less than seventy five dollars (\$75.00) or more than seven hundred and fifty dollars (\$750.00) for each offense. Each and every day that a violation of this Ordinance is allowed to remain in effect shall constitute a complete and separate offense. In addition, the appropriate authorities of the City may take such other action as they deem proper to enforce the terms and conditions of

this Ordinance, including, without limitation, an action in equity to compel compliance with its terms. Any person, firm or corporation violating the terms of this Ordinance shall be subject, in addition to the foregoing penalties, to the payment of court costs and reasonable attorneys' fees.

B. In the event that the Petitioner or Owner fails to develop or maintain the Subject Property in accordance with the plans submitted, the requirements of the Zoning Ordinance, or the conditions set forth in Section 4 of this Ordinance, the Conditional Use Permit granted in Section 3 of this Ordinance may be revoked after notice and hearing before the Zoning Administrator of the City, all in accordance with the procedures set forth in Section 4.7 of the Zoning Ordinance. In the event of revocation, the development and use of the Subject Property will be governed solely by the regulations of the C-3 District. Further, in the event of such revocation the Conditional Use Permit, the City Manager and City's General Counsel are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Petitioner and Owner acknowledge that public notices and hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice and hearing required by Section 4.7 of the Zoning Ordinance is provided to the Petitioner and Owner.

SECTION 7. EFFECTIVE DATE.

A. This Ordinance shall be in full force and effect only after the occurrence of the following events:

- 1. its passage and approval by the City Council in the manner provided by law;
- 2. its publication in pamphlet form in the manner provided by law;
- 3. the filing with the City Clerk by the Petitioner and the Owner, not less than 60 days after the passage and approval of this Ordinance, of an unconditional agreement

and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance, and demonstrating the Petitioner's and Owner's consent to its recordation. Said unconditional agreement and consent shall be in substantially the form attached to, and by this reference made a part of, this Ordinance as **Exhibit C**; and

- 4. at the Petitioner's sole cost and expense, the recordation of this Ordinance together with such exhibits as the City Clerk deems appropriate, with the Office of the Cook County Recorder.
- B. In the event that the Petitioner and the Owner do not file with the City Clerk a fully executed copy of the unconditional agreement and consent referenced in Section 7.A.3 of this Ordinance, within 60 days after the date of passage of this Ordinance by the City Council, the City Council shall have the right, in its sole discretion, to declare this Ordinance null and void and of no force or effect.

SECTION 8. SEVERABILITY. If any paragraph, section, clause or provision of this

Ordinance is held invalid, the remainder shall continue in full force and effect without affecting

the validity of the remaining portions of the Ordinance.

[SIGNITURE PAGE FOLLOWS]

PASSED this $7^{t_{a}}$ day of $4^{t_{a}}$, 2021. APPROVED this $7^{t_{a}}$ day of $4^{t_{a}}$, 2021. VOTE: AYES 6 NAYS 6 ABSENT 6

ATTEST:

CITY CLERK

Published in pamphlet form this gt day of full day of Chul 2021.

Approved as to form:

Khird Shaw

MAYOR

Peter M. Friedman, General Counsel

DP-Ordinance Approving a Conditional Use Permit (CUP) at 1628 Rand Road for a Trade Contractor Use

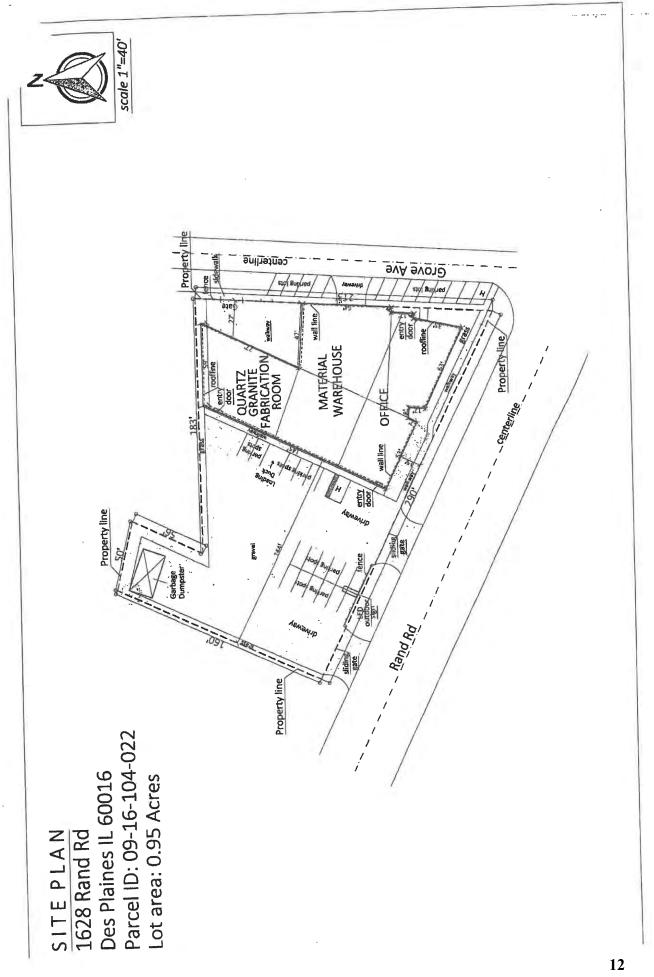
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5136 N Pearl St. Schiller Park II 60176 Tel:(847) 928-1111 Fax: (847) 928-1138

Website: www.houseofgranite.com Email: houseofgranite@hotmail.com

We are Company since 2002 in market at one location pass 19 years . We sell or kind of stone granite, quartz ,marble qurtzite kitchen cabinets, sinks, faucets ,counter tops vanity's , shower glass all brands . We important stuff all over the world . Our goal is keep nice clean store showroom ,warehouse , fabrication counter tops close to the people . We currently have our location at Schiller Park 10000.00 sq ft .We want move our businesses to Des Plains to bigger location and more parking spaces . We are open 6 Days a week store from 8:30 AM to 6:00 PM and warehouse and fabrication from 7:15 AM to 6:00 PM .Our team is 12 people same times more is the pants at the session . We want duet nice improvement to this location .

Sincerely Peter Topolewicz



UNCONDITIONAL AGREEMENT AND CONSENT

TO: The City of Des Plaines, Illinois (*"City"*):

WHEREAS, Peter Topolewick ("*Petitioner*") applied to the City of Des Plaines for a conditional use permit to allow a trade contractor establishment ("*Conditional Use Permit*") on that certain property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*") pursuant to Section 12-7-3.E.3 and 12-7-3.K of the City of Des Plaines Zoning Ordinance of 1998, as amended; and

WHEREAS, Ordinance No. Z-36-21 adopted by the City Council of the City of Des Plaines on June 7, 2021 ("*Ordinance*"), grants approval of the Conditional Use Permit, subject to certain conditions; and

WHEREAS, at the time Ordinance No. Z-36-21 was adopted, the Subject Property was owned by Elliott Kratz, who subsequently passed away prior to the execution of this Unconditional Agreement and Consent; and

WHEREAS, ART Investment, LLC, an Illinois limited liability company ("*Owner*"), subsequently acquired fee title to the Subject Property and agrees and acknowledges that the Property is subject to the terms, conditions, and restrictions of Ordinance Z-36-21; and

WHEREAS, the Petitioner and the Owner each desires to evidence to the City its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in said Ordinance, and its consent to recording the Ordinance and this Unconditional Agreement and Consent against the Subject Property;

NOW, THEREFORE, the Petitioner and the Owner do hereby agree and covenant as follows:

- 1. Petitioner and Owner hereby unconditionally agree to accept, consent to and abide by all of the terms, conditions, restrictions, and provisions of that certain Ordinance No. Z-36-21, adopted by the City Council on June 7, 2021.
- 2. Petitioner and Owner acknowledge and agree that the City is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the City's review and approval of any plans for the Subject Property, or the issuance of any permits for the use and development of the Subject Property, and that the City's review and approval of any such plans and issuance of any such permits does not, and shall not, in any way, be deemed to insure Petitioner or Owner against damage or injury of any kind and at any time.
- 3. Petitioner and Owner acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any such revocation on the grounds of any procedural infirmity or

{00121938.1}

any denial of any procedural right, provided that the procedures required by Section 12-4-7 of the City's Zoning Ordinance are followed.

- 4. Petitioner agrees to and do hereby hold harmless and indemnify the City, the City's corporate authorities, and all City elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (a) the City's review and approval of any plans and issuance of any permits, (b) the procedures followed in connection with the adoption of the Ordinance, (c) the development, construction, maintenance, and use of the Subject Property, and (d) the performance by Petitioner of its obligations under this Unconditional Agreement and Consent.
- 5. Petitioner hereby agrees to pay all expenses incurred by the City in defending itself with regard to any and all of the claims mentioned in this Unconditional Agreement and Consent. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the City.

PETER TOPOLEWICK ATTEST: By: Victoria Bv Its: PRESIDA SUBSCRIBED and SWORN to before me this 22^{n} day of November 2021. OFFICIAL SEAL VICTORIA M BAUMANN NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:02/25/22 Notary Public ART INVESTMENT, LLC ATTEST: Mall auman SUBSCRIBED and SWORN to Its: before me this 200 day of 2021. rende OFFICIAL SEAL VICTORIA M BAUMANN NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:02/25/22 Notary Public {00121938.1}

CITY OF DES PLAINES

ORDINANCE Z-36-21

AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A TRADE CONTRACTOR ESTABLISHMENT AT 1628 RAND ROAD, DES PLAINES, ILLINOIS

ADOPTED ON JUNE 7, 2021 BY THE CITY COUNCIL OF THE CITY OF DES PLAINES

Published in pamphlet form by authority of the City Council of the City of Des Plaines, Cook County, Illinois, on this 8th day of June, 2021.

.

STATE OF ILLINOIS)) SS. COUNTY OF COOK)

CERTIFICATE

I, Jessica M. Mastalski, certify that I am the duly elected and acting Municipal Clerk of the City of Des Plaines, Cook County, Illinois.

I further certify that on June 7, 2021 the Corporate Authorities of such municipality passed and approved Ordinance Z-36-21, AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A TRADE CONTRACTOR ESTABLISHMENT AT 1628 RAND ROAD, DES PLAINES, ILLINOIS provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance Z-36-21 was posted in the municipal building commencing on June 8, 2021 and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Des Plaines, Illinois, this 8th day of June, 2021.

(SEAL)

<u>Jessica M. Mastalshi</u> Jessica M. Mastalski, City Clerk

By:

Laura Jast

aura Fast. Deputy Clerk

*Per the provisions of 65 ILCS 5/3.1-20-5 Of the Illinois Compiled Statutes (2006)

CITY OF DES PLAINES

ORDINANCE Z - 26 - 22

AN ORDINANCE GRANTING AN AMENDMENT TO AN EXISTING CONDITIONAL USE PERMIT TO ALLOW OUTDOOR DISPLAY AND STORAGE OF PRODUCTS RELATED TO THE TRADE CONTRACTOR USE LOCATED AT 1628 RAND ROAD, DES PLAINES, ILLINOIS.

WHEREAS, Granite Place & Quartz, LLC and Cabinet Land Kitchen & Bath Corporation (collectively, the "*Petitioner*") are the lessees of the property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*"); and

WHEREAS, the Subject Property is located in the C-3 General Commercial District of the City ("C-3 District"); and

WHEREAS, on June 7, 2021, the City Council adopted Ordinance Z-36-21 ("Conditional Use Ordinance"), approving a conditional use permit to allow a trade contractor use on the Subject Property ("Conditional Use Permit"); and

WHEREAS, the Conditional Use Ordinance prohibits the storage of products outdoors on the Subject Property; and

WHEREAS, the Petitioner desires to store and display products on the Subject Property; and

WHEREAS, the Petitioner submitted an application to the City of Des Plaines Department of Community and Economic Development ("Department") to amend the Conditional Use Permit to allow the outdoor storage and display of products on the Subject Property in accordance with Section 12-7-3 of the Zoning Ordinance ("Amended Conditional Use Permit"), in accordance with Section 12-3-4 of the Zoning Ordinance; and

WHEREAS, the Subject Property is owned by Art Investment, LLC ("Owner"), which has consented to the Petitioner's application; and

WHEREAS, the Petitioner's application was referred by the Department to the Planning and Zoning Board of the City of Des Plaines ("*PZB*") within 15 days after the receipt thereof; and

WHEREAS, within 90 days from the date of the Petitioner's application a public hearing was held by the PZB on July 26, 2022 pursuant to notice published in the *Des Plaines Journal* on July 6, 2022; and

WHEREAS, notice of the public hearing was mailed to all property owners within 500 feet of the Subject Property; and

WHEREAS, during the public hearing, the PZB heard testimony and received evidence with respect to how the Petitioner intended to satisfy and comply with the applicable provisions of the Zoning Ordinance; and

WHEREAS, pursuant to Section 12-3-4 of the Zoning Ordinance, the PZB filed a written report with the City Council on July 27, 2022, summarizing the testimony and evidence received by the PZB and stating the Board's recommendation, by a vote of 4-0, to approve the Petitioner's application for the Amended Conditional Use Permit, subject to certain terms and conditions; and

WHEREAS, the Petitioner made certain representations to the PZB with respect to the proposed Amended Conditional Use Permit, which representations are hereby found by the City Council to be material and upon which the City Council relies in granting this request for the Amended Conditional Use Permits; and

WHEREAS, the City Council has considered the written report of the PZB, the applicable standards for conditional use permits set forth in the Zoning Ordinance, and the Community and Economic Development Staff Memorandum dated August 25, 2022, including the attachments and exhibits thereto, and has determined that it is in the best interest of the City and the public to grant the Petitioner's application in accordance with the provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des

Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1. RECITALS. The recitals set forth above are incorporated herein by

reference and made a part hereof, the same constituting the factual basis for this Ordinance.

SECTION 2. LEGAL DESCRIPTION OF SUBJECT PROPERTY. The Subject

Property is legally described as follows:

LOTS 14 TO 18, BOTH INCLUSIVE, (EXCEPT THE SOUTHWESTERLY 17.0 FEET THEREOF) IN BLOCK 3 IN RIVER-RAND ROAD SUBDIVISION OF LOTS 1 TO 8, INCLUSIVE, IN BLOCK 18 (OR BENNET BLOCK) AND LOT 1 TO 13, EXCLUSIVE IN, BLOCK 18 (OR RAND BLOCK) IN PARK SUBDIVISION OF PARTS OF SECTIONS 16 AND 17, TOWNHSIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

PIN: 09-16-104-022-0000

Commonly known as: 1628 Rand Road, Des Plaines, Illinois.

SECTION 3. AMENDED CONDITIONAL USE PERMIT. Subject to and contingent upon the conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City Council grants the Petitioner an Amended Conditional Use Permit to allow the outdoor display and storage of products on Subject Property, in accordance with Section 12-7-3 of the Zoning Ordinance. The Amended Conditional Use Permit granted by this Ordinance is consistent with and equivalent to a "special use" as referenced in Section 11-13-25 of the Illinois Municipal Code, 65 ILCS 5/11-13-25.

SECTION 4. CONDITIONS. The Amended Conditional Use Permit granted in Section 3 of this Ordinance shall be, and is hereby, expressly subject to and contingent upon the following conditions, restrictions, limitations, and provisions:

A. <u>Compliance with Law and Regulations</u>. The development, use, operation, and maintenance of the Subject Property, by the Petitioner must comply with all applicable City codes and ordinances, including, without limitation, the Conditional Use Ordinance, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance.

B. <u>Compliance with Plans</u>. Except for minor changes and site work approved by the City Director of Community and Economic Development in accordance with all applicable City standards, the development, use, operation, and maintenance of the Subject Property by the Petitioner must comply with the following plans as may be amended to comply with Section 4.C of this Ordinance: that certain "Final Site Plan" prepared by the Owner, consisting of one sheet, with a latest revision date of February 22, 2022, attached to and by this reference made a part of this Ordinance as **Exhibit A** (*"Site Plan"*); and

C. <u>Additional Conditions</u>. The development, use, and maintenance of the Subject Property shall be subject to and contingent upon the following additional conditions:

1. All proposed improvements shown on the Site Plan must be constructed in full compliance with all applicable codes and ordinances. Plans and drawings may require modification in order to comply with current City codes and ordinances; and

2. No outdoor display or storage of products is allowed on the Subject Property unless the location of the outdoor display and storage of products complies with the City of Des Plaines Flood Control Regulations set forth in Title 14 of the City Code.

SECTION 5. RECORDATION; NON-TRANSFERABILITY. The privileges, obligations, and provisions of each and every section and requirement of this Ordinance are for and shall inure solely to the benefit of Petitioner. Nothing in this Ordinance shall be deemed to allow the Petitioner to transfer any of the rights or interests granted herein to any other person or entity without the prior approval of the City Council by a duly adopted amendment to this Ordinance.

SECTION 6. NONCOMPLIANCE.

A. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of, any of the provisions of this Ordinance shall be fined not less than seventy five dollars (\$75.00) or more than seven hundred and fifty dollars (\$750.00) for each offense. Each and every day that a violation of this Ordinance is allowed to remain in effect shall constitute a complete and separate offense. In addition, the appropriate authorities of the City may take such other action as they deem proper to enforce the terms and conditions of this Ordinance, including, without limitation, an action in equity to compel compliance with its terms. Any person, firm or corporation violating the terms of this Ordinance shall be subject, in addition to the foregoing penalties, to the payment of court costs and reasonable attorneys' fees.

Β. In the event that the Petitioner or Owner fails to develop or maintain the Subject Property in accordance with the plans submitted, the requirements of the Zoning Ordinance, or the conditions set forth in Section 4 of this Ordinance, the Conditional Use Ordinance as amended by this Ordinance, the Amended Conditional Use Permit granted in Section 3 of this Ordinance may be revoked after notice and hearing before the Zoning Administrator of the City, all in accordance with the procedures set forth in Section 12-4-7 of the Zoning Ordinance. In the event of revocation, the development and use of the Subject Property will be governed solely by the regulations of the C-3 District. Further, in the event of such revocation of the Amended Conditional Use Permit, the City Manager and City's General Counsel are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Petitioner and Owner acknowledge that public notices and hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice and hearing required by Section 12-4-7 of the Zoning Ordinance is provided to the Petitioner and Owner.

SECTION 7. EFFECTIVE DATE.

A. This Ordinance shall be in full force and effect only after the occurrence of the following events:

- 1. its passage and approval by the City Council in the manner provided by law;
- 2. its publication in pamphlet form in the manner provided by law;

3. the filing with the City Clerk by the Petitioner and the Owner, not less than 60 days after the passage and approval of this Ordinance, of an unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance, and demonstrating the Petitioner's and Owner's consent to its recordation. Said unconditional agreement and consent shall be in substantially the form attached to, and by this reference made a part of, this Ordinance as **Exhibit B**; and

4. at the Petitioner's sole cost and expense, the recordation of this Ordinance together with such exhibits as the City Clerk deems appropriate, with the Office of the Cook County Recorder.

B. In the event that the Petitioner and the Owner do not file with the City Clerk a fully executed copy of the unconditional agreement and consent referenced in Section 7.A.3 of this Ordinance, within 60 days after the date of passage of this Ordinance by the City Council, the City Council shall have the right, in its sole discretion, to declare this Ordinance null and void and of no force or effect.

SECTION 8. SEVERABILITY. If any paragraph, section, clause or provision of this Ordinance is held invalid, the remainder shall continue in full force and effect without affecting the validity of the remaining portions of the Ordinance.

[SIGNITURE PAGE FOLLOWS]

PASSED this ______day of ______, 2022.

APPROVED this _____ day of _____, 2022.

VOTE: AYES _____ NAYS ____ ABSENT _____

ATTEST:

MAYOR

CITY CLERK

Published in pamphlet form this _____, 2022.

CITY CLERK

Peter M. Friedman, General Counsel

Approved as to form:

ATTEST:	GRANITE PLACE & QUARTZ, LLC
By:	By:
	Its:
ATTEST:	CABINET LAND KITCHEN & BATH CORPORATION
By:	By:
	Its:
ATTEST:	ART INVESTMENT, LLC
By:	By:
	Its:

CITY OF DES PLAINES

ORDINANCE Z - 27 - 22

AN ORDINANCE APPROVING MAJOR VARIATIONS FROM SECTION 12-11-6.B OF THE CITY OF DES PLAINES ZONING ORDINANCE TO ALLOW THE INSTALLATION OF WALL SIGNS AND AN ELECTRONIC MESSAGE BOARD POLE SIGN AT 1628 RAND ROAD, DES PLAINES, ILLINOIS (CASE #22-024-TA-CU-V).

WHEREAS, Granite Place & Quartz, LLC and Cabinet Land Kitchen & Bath Corporation (collectively, the "*Petitioner*") are the lessees of that certain property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*"); and

WHEREAS, the Subject Property is located in the C-3 General Commercial District of the City ("C-3 District"); and

WHEREAS, pursuant to Section 12-11-6.B of the Des Plaines Zoning Ordinance of 1998, as amended ("Zoning Ordinance"): (i) the total sign area permitted on any street-facing building elevation may not exceed 125 square feet; (ii) the animated face of an electronic message board sign must be at least 250 feet from a residence located in the R-1, R-2, or R-3 Districts; and (iii) electronic message boards may not exceed 50 percent of the total sign area; and

WHEREAS, the Petitioner has installed wall signs on the Subject Property with the total sign area of 236 square feet, in violation of Section 12-11-6.B of the Zoning Ordinance; and

WHEREAS, the Petitioner proposes to install an electronic message board sign in an existing pole sign structure that would: (i) would be located 189.5 feet from the nearest residence in the R-1 District; and (ii) consist of 100 percent of the sign area, in violation of Section 12-11-6.B of the Zoning Ordinance; and

WHEREAS, the Petitioner submitted an application to the City of Des Plaines to the Department of Community and Economic Development ("Department") for major variations from Section 12-11-6.B of the Zoning Ordinance to: (i) increase the maximum wall sign area from 125 square feet to 236 square feet ("Wall Sign Area Variation"); (ii) decrease the required distance between the animated face of an electronic message board sign and a residence in the R-1 District from 250 feet to 189.5 feet ("Residential Separation Variation"); and (iii) increase the maximum permitted sign area for the electronic message board sign from 50 percent to 100 percent ("EMB Sign Area Variation") (collectively, the "Variations"); and

WHEREAS, the Petitioner's application for the Variations was referred by the Department, within 15 days after its receipt, to the Planning and Zoning Board of the City of Des Plaines ("PZB"); and

WHEREAS, within 90 days after the date of the Petitioner's application, a public hearing

was held by the PZB on July 26, 2022, pursuant to publication of notice in the *Des Plaines Journal* on July 6, 2022; and

WHEREAS, notice of the public hearing was mailed to all owners of property located within 500 feet of the Subject Property; and

WHEREAS, during the public hearing, the PZB heard testimony and received evidence with respect to the Petitioner's application for the Variations; and

WHEREAS, on July 26, 2022, the PZB voted on the following motions: (i) the motion to recommend approval the Wall Sign Area Variation passed by a vote of 4-0; (ii) the motion to recommend approval of the Residential Separation Variation passed by a vote of 3-1; and (iii) the motion to recommend approval of the EMB Sign Area Variation failed to pass by a vote of 2-2; and

WHEREAS, on July 27, 2022, the PZB filed a written report with the City Council summarizing the testimony received by the PZB and the PZB's recommendations; and

WHEREAS, the Petitioner made representations to the PZB with respect to the requested Variations, which representations are hereby found by the City Council to be material and upon which the City Council relies in granting the Variations subject to certain terms and conditions; and

WHEREAS, the City Council has studied the written report of the PZB, the applicable standards set forth in the Zoning Ordinance, and the Staff Memorandum dated August 25, 2022, including its exhibits, which form part of the basis for this Ordinance;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Des

Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1. RECITALS. The recitals set forth above are incorporated herein by

reference and made a part hereof, the same constituting part of the factual basis for this Ordinance

granting the Variations.

SECTION 2. LEGAL DESCRIPTION OF SUBJECT PROPERTY. The Subject

Property is legally described as follows:

LOTS 14 TO 18, BOTH INCLUSIVE, (EXCEPT THE SOUTHWESTERLY 17.0 FEET THEREOF) IN BLOCK 3 IN RIVER-RAND ROAD SUBDIVISION OF LOTS 1 TO 8, INCLUSIVE, IN BLOCK 18 (OR BENNET BLOCK) AND LOT 1 TO 13, EXCLUSIVE IN, BLOCK 18 (OR RAND BLOCK) IN PARK SUBDIVISION OF PARTS OF SECTIONS 16 AND 17, TOWNHSIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

PIN: 09-16-104-022-0000

Commonly known as 1628 Rand Road, Des Plaines, Illinois.

SECTION 3. VARIATIONS.

A. <u>Wall Sign Area Variation</u>. The City Council finds that the Wall Sign Area Variation satisfies the standards set forth in Section 12-3-6.H of the Zoning Ordinance and, pursuant to the City's home rule powers, finds that the Wall Sign Area Variation is otherwise necessary and appropriate. Subject to and contingent upon the conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City Council hereby grants the Wall Sign Area Variation for the Subject Property to the Petitioner.

B. <u>Residential Separation Variation</u>. The City Council finds that the Residential Separation Variation satisfies the standards set forth in Section 12-3-6.H of the Zoning Ordinance and, pursuant to the City's home rule powers, finds that the Residential Separation Variation is otherwise necessary and appropriate. Subject to and contingent upon the conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City Council hereby grants the Residential Separation Variation for the Subject Property to the Petitioner.

C. <u>EMB Sign Area Variation</u>. The City Council finds that the EMB Sign Area Variation satisfies the standards set forth in Section 12-3-6.H of the Zoning Ordinance and, pursuant to the City's home rule powers, finds that the EMB Sign Area Variation is otherwise necessary and appropriate. Subject to and contingent upon the conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City Council hereby grants the EMB Sign Area Variation for the Subject Property to the Petitioner.

SECTION 4. CONDITIONS. The Variations granted in Section 3 of this Ordinance shall be, and are expressly subject to and contingent upon the conditions, restrictions, and limitations set forth in this Section 4. The development, use, and maintenance of the Subject Property shall be in strict compliance with the "Sign Photos and Renderings" consisting of 11 sheets, submitted by the Petitioner, and undated, copies of which is attached to and, by this reference, made a part of this Ordinance as **Exhibit A**, except for minor changes and site work approved by the Director of the Department of Community and Economic Development in accordance with applicable City codes, ordinances, and standards.

SECTION 5. **EFFECT**. This Ordinance authorizes the use and development of the Subject Property in accordance with the terms and conditions of this Ordinance and shall prevail against other ordinances of the City to the extent that any might conflict. The terms and conditions of this Ordinance shall be binding upon Petitioner, its grantees, assigns and successors in interest to the Subject Property.

SECTION 6. LIMITATIONS. The Variations shall be valid for not more than 12 months prior to the issuance of a building permit and the commencement of construction in accordance with the terms and conditions of this Ordinance. The Zoning Administrator may extend the Variations if the Petitioner requests an extension in accordance with Section 12-3-6.L of the Zoning Ordinance.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law; provided, however, that this Ordinance shall not take effect unless and until a true and correct copy of this Ordinance is executed by the Owner of the Subject Property or such other party in interest consenting to and agreeing to be bound by the terms and conditions contained within this Ordinance. Such execution shall take place within 60 days after the passage and approval of this Ordinance or within such extension of time as may be granted by the City Council by motion and delivered directly to the City Clerk.

SECTION 8. SEVERABILITY. If any paragraph, section, clause or provision of this Ordinance is held invalid, the remainder shall continue in full force and effect without affecting the validity of the remaining portions of the Ordinance.

PASSED this 19th day of Liptenter, 2022. APPROVED this 19th day of September, 2022. VOTE: Ayes 7 Nays A Absent /

MAYOR

ATTEST:

CITY CLERK

Published in pamphlet form this 202 day of Automatic , 2022.

CITY CLERK, Deputy

Approved as to form:

En richun

Peter M. Friedman, General Counsel

I, ______, being the owner or other party in interest of the property legally described within this Ordinance, having read a copy of the Ordinance, do hereby accept, concur and agree to develop and use the Subject Property in accordance with the terms of this Ordinance.

Dated:

(Signature)

CITY OF DES PLAINES

ORDINANCE Z-27-22

AN ORDINANCE APPROVING MAJOR VARIATION S FROM SECTION 12-11-6.B OF THE CITY OF DES PLAINES ZONING ORDINANCE TO ALLOW THE INSTALLATION OF WALL SIGNS AND AN ELECTRONIC MESSAGE BOARD POLE SIGN AT 1628 RAND ROAD, DES PLAINES, ILLINOIS (CASE #22-024-TA-CU-V)

> ADOPTED ON SEPTEMBER 19, 2022 BY THE CITY COUNCIL OF THE CITY OF DES PLAINES

Published in pamphlet form by authority of the City Council of the City of Des Plaines, Cook County, Illinois, on this 20th day of September, 2022.

STATE OF ILLINOIS)) SS. COUNTY OF COOK)

CERTIFICATE

I, Jessica M. Mastalski, certify that I am the duly elected and acting Municipal Clerk of the City of Des Plaines, Cook County, Illinois.

I further certify that on September 19, 2022, the Corporate Authorities of such municipality passed and approved Ordinance Z-27-22, AN ORDINANCE APPROVING MAJOR VARIATION S FROM SECTION 12-11-6.B OF THE CITY OF DES PLAINES ZONING ORDINANCE TO ALLOW THE INSTALLATION OF WALL SIGNS AND AN ELECTRONIC MESSAGE BOARD POLE SIGN AT 1628 RAND ROAD, DES PLAINES, ILLINOIS (CASE #22-024-TA-CU-V) provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance Z-27-22 was posted in the municipal building commencing on September 20, 2022 and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Des Plaines, Illinois, this 20th day of September, 2022.

(SEAL)

Jence M. Mastelski, City Clerk

By:

Laura Fast, Deputy Clerk

*Per the provisions of 65 ILCS 5/3.1-20-5 Of the Illinois Compiled Statutes (2006)



EXISTING WOOD FRAME IS TIED INTO THE WALL WITH ¾" (THICK) AND 8' (LONG) KWIK BOLT LONG THREAD CARBON STEEL EXPANSION ANCHORS.

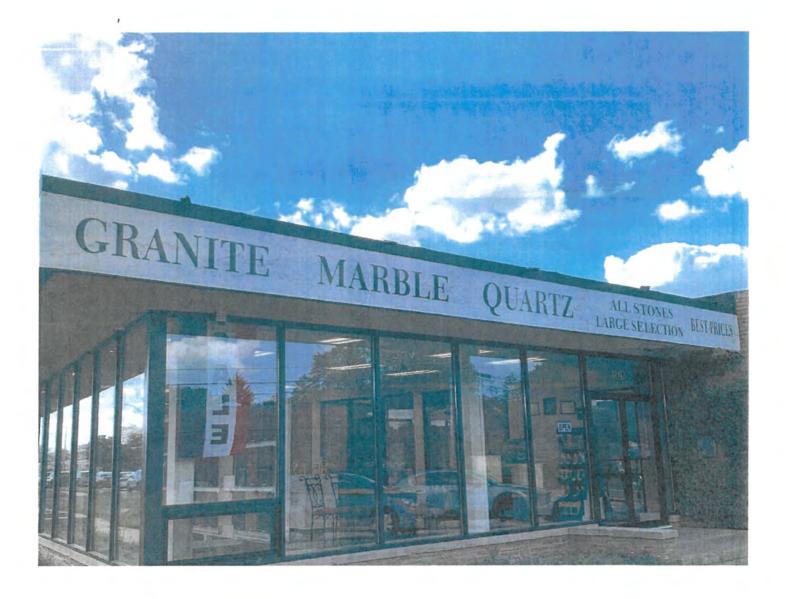
MATERIAL: ALU PANEL 12.5 MM INSTALL TO EXISTING GREEN WOOD FRAME.

DIMENSIONS: 24' X 3'



Attachment 3



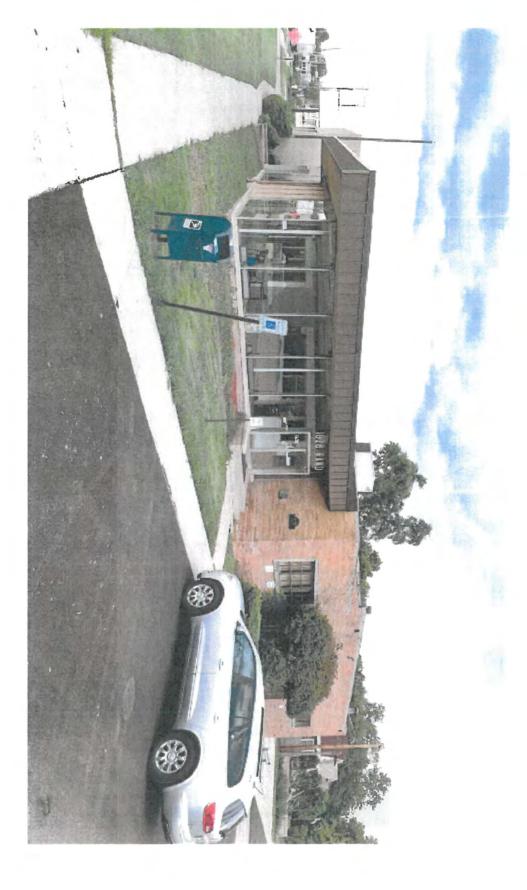


VINYL WRAP OVER EXISTING FRONT FASCIA BOARD.

MATERIAL: VINYL STICKER

DIMENSIONS: 82' X 2'





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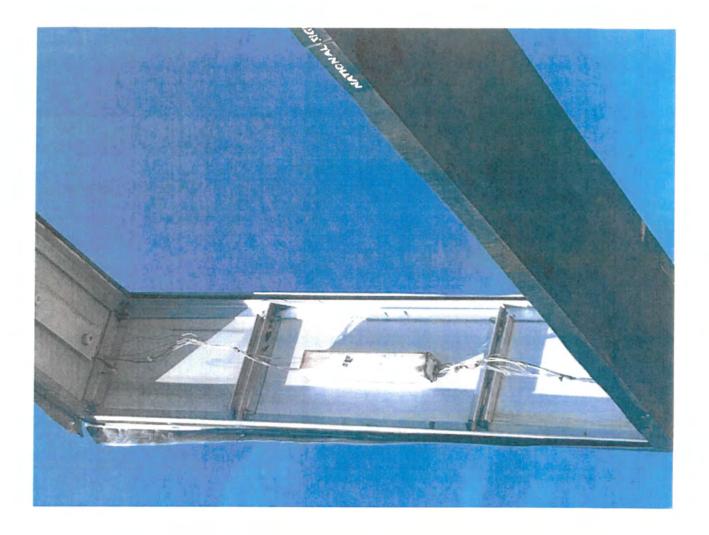


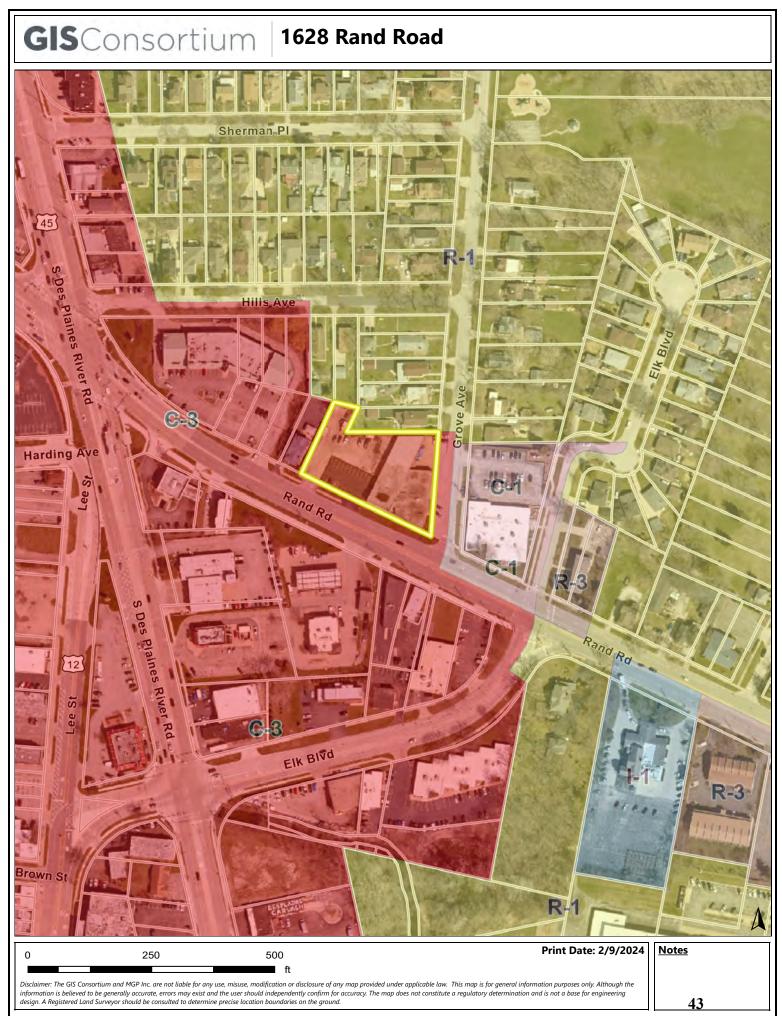
Outdoor LED Programmable sign 16mm Pixel Pitch Cabinet Size 73" by 144" Viewable Area 70.5" by 141.5" Brightness adjustable and includes Auto Dimmer Install to existing Electric contraction

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1628 Rand Road – Outdoor Display



1628 Rand Road – Outdoor Display



1628 Rand Road – Subject Property



1628 Rand Road – Motor Vehicle Sales Entrance



1628 Rand Road – Outdoor Display



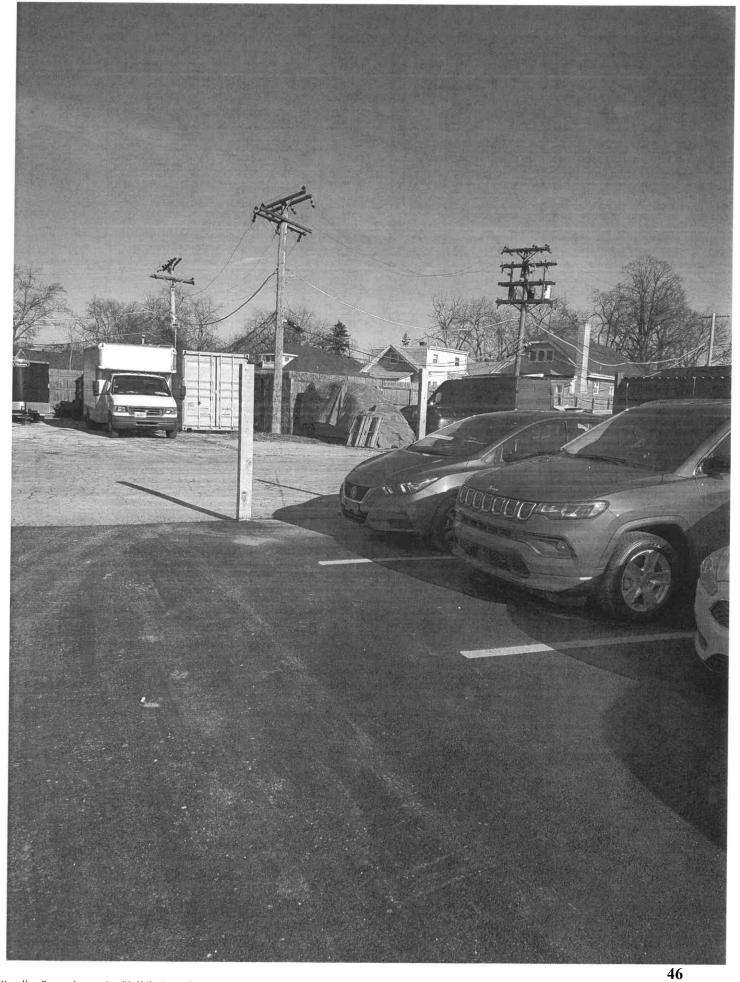
1628 Rand Road – Outdoor Display



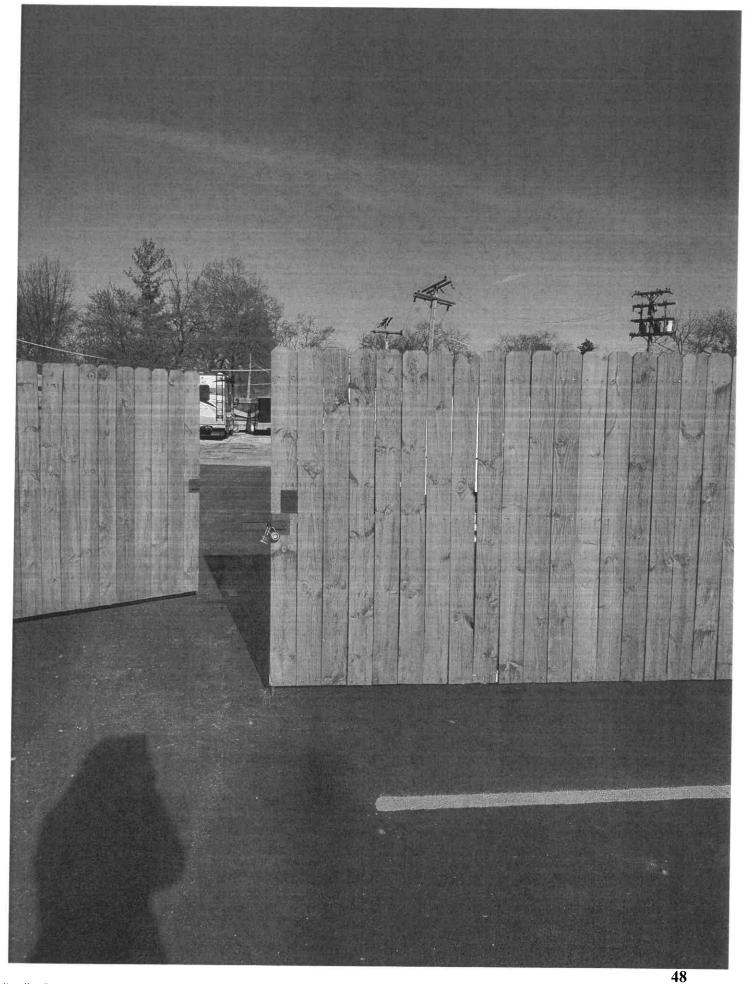
1628 Rand Road – Subject Property

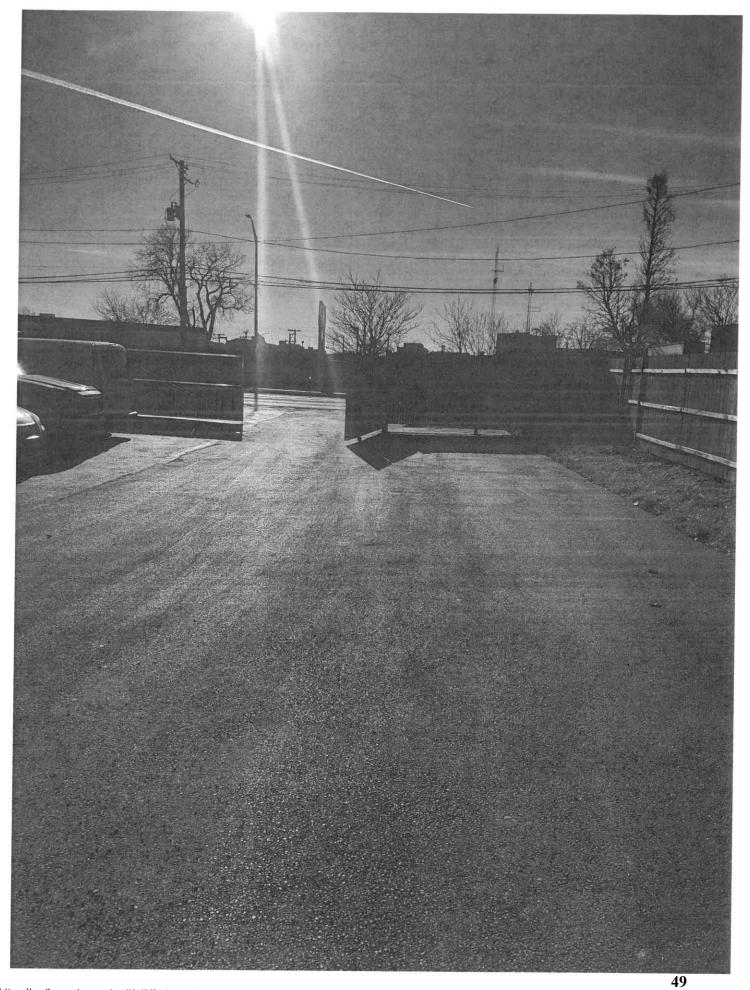


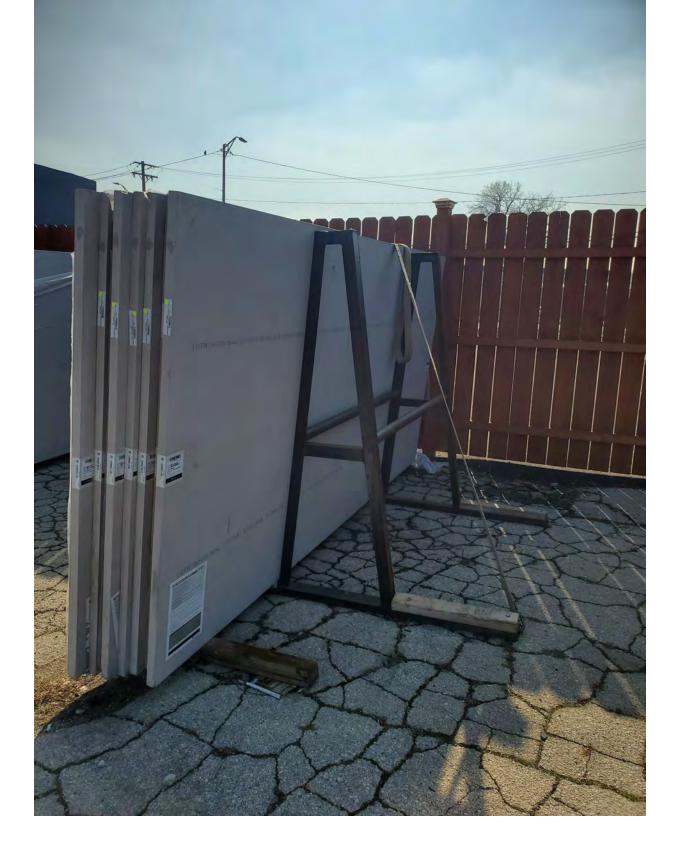
1628 Rand Road – Motor Vehicle Sales Entrance



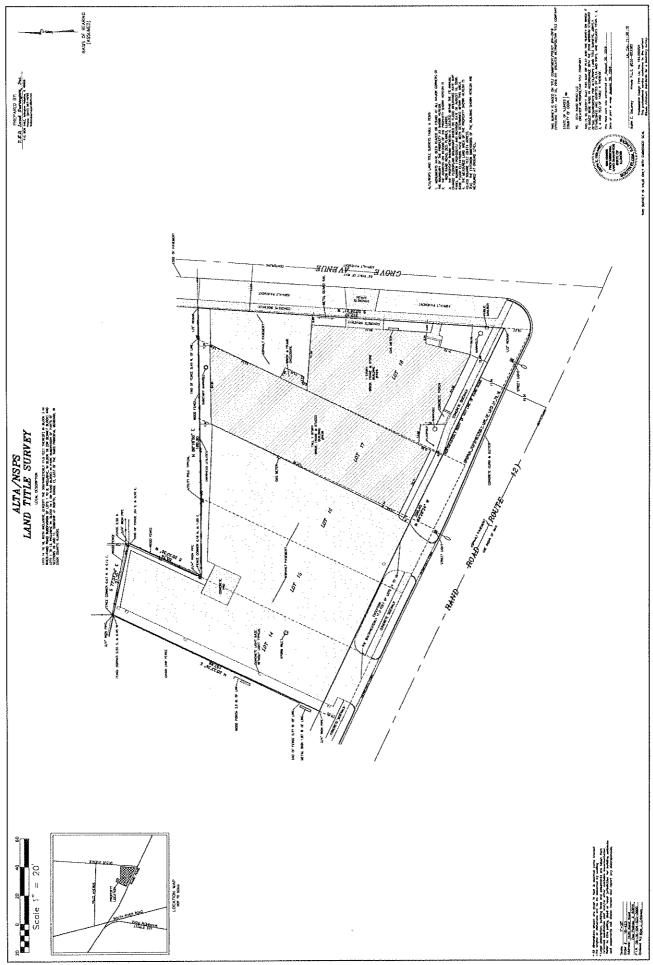












Attachment 6

Project Narrative

The Petitioner, Urszula Topolewicz, as lessor of AutoDepot Car Sales LLC, is requesting an Amendment to the Conditional Use Permit to a Trade Contractor Use at 1628 Rand Road, Des Plaines, IL 60016, namely under Title 12 Chapter 7 Subjection 3 (12-7-3) and requesting an Amendment to the Conditional Use Permit for Trade Contractor use, at 1628 Rand Road, namely, Ordinance Z-36-21 regarding storge; specifically, the restriction of Ordinance Z-36-21 Section 4. Conditions subparagraph C. 4.

The subject property is located within the C-3 General Commercial District and has been granted conditional use as a Trade Contractor in the C-3 zoning district (Z-36-21). The subject property contains a commercial building with and off-street surface parking area on the west side of the property and on-street parking area along Grove Ave on the east side of the property as shown on the Plat of Survey. (Attached as Exhibit A). The subject property is located along Rand Road at the northwest corner of the Rand/Grove Lane intersection. The property is currently accessed by three curb cuts, two off Rand Road and one off Grove Lane.

The existing one story building which is roughly 15,300 sq ft consists of two front customer entrances located on the southwest and southeast of the property. The proposed uses of the property is a used car dealership with minor service/repairs and car detail cleaning only for vehicles sold by the dealership. The detailing services will not be open to the general public only to customers who purchase vehicles from the dealership. The remainder of the building, 11,400 sq ft will continue to be leased to Granite Place & Quartz LLC. Granite Place & Quartz LLC will not have any changes and no further information is required as this was provided previously and in the Village record.

The Petitioner's request does not involve any changes/ modifications to the building that would require permits. If permits are required to simply move the fence and reface the sign Petitioner/ Owner will acquire the permits as per the Village instructions per 2015 IBC 105.2. However, please note that throughout several conversations with the Village representatives no permit requirements were raised. Again, if permits are required this should be advised and my client will obtain. As the owner of the property has done in the past, they will continue to obtain any permits required and continue to contribute to the beautification and safety of the surrounding residence.

The exterior changes to the property include moving the wooden gate from the front northwest end to the back northwest end of the property, as illustrated on the survey, to open more parking to the public. The gate will be moved to the back northwest end of the property and will separate the private backyard area from the public parking and car sale lot. The interior changes simply include the removal of the kitchen cabinets displays from the show room. The interior space being utilized by the car dealership is the same space utilized by the previous lessor of Cabinet Land Kitchen & Bath Co. The Petitioner does not believe the interior or exterior work require permits.

Use	Total Area / Vehicles	Parking Requirement	Provided Parking
Motor Vehicle Sales	Showroom: 850 sq ft Office space:,	1 space per 500 square feet of showroom and	11 spaces outside for motor vehicle display
	hallway, bathrooms 1,500 sq ft Warehouse space:	office floor area, plus 1 space for every 20 vehicle display spaces	3-4 spaces in interior showroom for motor vehicle display
	\$1,550 sq ft	(required off street parking spaces	11 plus 1 handicapped parking spaces for
	Total sq ft – 3,900 sq ft	cannot be occupied by motor vehicles for sale or for lease)	customers (total 12 spaces)
			Off street parking is not included in the above numbers
Motor Vehicle Sales – Display Spaces	20 vehicles maximum	Spaces used for motor vehicle display may not be	23 parking spaces noted on site plan; 11 for displayed vehicles
		used to meet parking requirements	and 13 for customers.
Trade Contractor	Showroom: 850 sq ft Office space, hallway, bathrooms: 1,500 sq ft Please see sight Plan	No parking required	23 parking spaces noted on site plan; 11 for displayed vehicles and 12 for customers.

As displayed on the Plat of Survey, Petitioner will only utilize roughly 3,900 sq ft of the interior of the property which includes Showroom: 850 sq ft; Office space: 1,500 sq ft and Warehouse space: \$1,550 sq ft. The remaining portion of the property will continue to be leased Granite Place & Quartz LLC.., which is 11,400 sq ft as illustrated on the Site Plan. The interior will be used as office space and possibly display of up to four vehicles in the showroom area consisting of 1,500 sq ft . Along with 1,550 sq ft of warehouse space for car detailing which is separated from the office and showroom area. There will be no service bays. The minor repairs/detailing will be completed inside the warehouse.

AutoDepot Car Sales LLC will operate Monday to Saturday 9:00 am to 9:00pm. Sunday the business is closed. The existing business Granite Place & Quartz LLC. shall remain the same as 54 Attachment 7

previously approved, the operating hours are Monday to Friday 9:00 am to 5:00 pm; Saturday 9:00 am to 3:00 pm; Sunday closed. Granite Place & Quartz LLC has its own overhead warehouse door for egress and ingress. The existing back yard i will provide access to both warehouses. In addition each of the two businesses have separate entrances for customers which is displayed on the site plan enclosed. The business will have a minimum of two (2) employees and a maximum of four (4). The Petitioner will display maximum of 20 vehicles, including exterior and interior displays. As illustrated on the Plat of Survey, there will be 12 customer parking spaces one of which is handicapped. There are currently 11 exterior parking spaces designated for displayed vehicles for sale.

This was one of the specific variations requested and tabled due to the property being in a flood plain. All items held in the outdoor backyard are moveable, including but not limited to the granite racks and the cars. The items include vehicles and granite racks for the holding of granite slabs. See pictures attached which was previously provided to the city and PZB board in both 2021 and 2022. This area is fenced off and not accessible to the public. Please also note that only a small portion of the this 0.96 acres lot is in a flood plain with only 1% chance of being equaled or exceeded in any given year.

As noted in the attached site plan, the property has been split off and separated into sections, including private and exclusive parking for customers. There is a separate section, closed off by a 8 foot fence for the business back yard, which has no access to the public nor views to the public or surrounding residence, thus creating no .public nuisance, The back yard of the business is utilized for cars, incoming and outgoing orders, for storage of business products and basic functioning of business orders. The current Ordinance Z-36-21 is written, namely Section 4. ALL PRODUCTS ARE MOVEABLE. Products include cars and granite slabs ON RACKS. Conditions subparagraph C. 4, not only restricts the Petitioners ability to conduct regular/standard business but also places the current employees health and safety at risk as the current restrictions under Section 4. Conditions subparagraph C. 4 of the Z-36-21 Ordinance

The private yard will not be accessible to the public. The existing gate will be removed and a new swing gate will be installed, as illustrated on the Plat of Survey, separating the private yard from the public area. The private yard is closed off by an 8 foot fence. The fenced off private yard has no access or views to the public, thus creating no public nuisance. The private yard will be utilized for the ingress and egress of vehicles being sold or serviced by the dealership and by Granite Place & Quartz LLC.

As you are aware the finished product we produce such as, granite/quartz/marble and/or any stone are not light materials that may be moved easily from place to place. The unrealistic and unsafe restrictions referenced in Section 4. Conditions subparagraph C. 4 of Ordinance Z-36-21 are placing the employees of the Petitioner in an unhealthy and unsafe work environment, especially during the fall and winter seasons. The Petitioner should have access to their own, secured back yard to store business equipment as fits the time of the season and need of the business.

In order to continue to serve the residents of Des Plaines, ensure a safe working environment for the employees and continue to not be a nuisance to the surrounding residence, Ordinance Z-36-21 should be modified as follows: Section 4. Conditions subparagraph C. 4 shall be removed in its entirety. The restriction of Ordinance Z-36-21 Section 4. Conditions subparagraph C. 4, is an additional restriction specifically for this property.

As there is no restriction/ stipulation in the City code regarding back yard storage, the Amendment to Ordinance Z-36-21 Section 4. Conditions subparagraph C. 4 would be the best resolution for all parties involved, including the Village, Petitioner, future and current C-3 and the surrounding community and residence. However, if a Text Amendment is required (which should not be as this an addition instead of an amendment to the City Code), then Petitioner proposes the following addition (not per se amendment as back yards are not covered in the statue to 12-7.3 F.5 but an addition): the addition of subparagraph 5.d to the City Code is requested to 12.7.3 F12-7.3 .5 as follows: Back yard may be used for storage of finished products and/or fabricated product and/or movable products such as cars but without limitation as long as the back yard is enclosed with 8 foot wooden fencing and does not create a health hazard to the surrounding residence or violate FEMA. A text amendment was previously submitted and my clients request encompasses the same.

There is a separate section, closed off by a 8 foot fence for the business back yard, which has no access to the public nor views to the public or surrounding residence, thus creating no .public nuisance, The back yard of the business is utilized for incoming and outgoing orders, for storage of business products , cars and basic functioning of business orders. The current Ordinance Z-36-21 is written, namely Section 4. Conditions subparagraph C. 4, not only restricts the Petitioners ability to conduct regular/standard business but also places the current employees health and safety at risk as the current restrictions under Section 4. Conditions subparagraph C. 4 of the Z-36-21 Ordinance. Despite a small portion of the corner property that is in a flood zone, all items stored in my clients private back yard are moveable.

The new business, namely AutoDepot Car Sales LLC, will replace the current sign from Cabinet Land Kitchen & Bath Co. to AutoDepot Car Sales LLC. The size and dimensions of the sign will not be changed. Simply refacing the current sign.

Since roughly September the Petitioner has been attempting to work with the Village to obtain approval to operate a used car dealership; almost half a year. Note that a new/used car dealership previously operated in this same location from 1975 to 2015. The annual property taxes on the property are roughly \$113,000. The owner cannot keep paying taxes without rental income.

I request the Village take a look at their records for over 3 years on this property since my client purchased. The discrimination against my clients is more than apparent in addition to the lack of due diligence on the part of the Village. Either way, it's a reason to sue the Village for their actions towards my client and their financial consequences for the Villages incompetency, lack of due diligence or responsibility. My client has spent and lost A LOT of money due to the Villages incompetency, lack of consistency and discrimination.

Thank you for your time and consideration regarding this matter. Please also keep in mind all improvements and requests made by the Petitioner have been and will continue to be to enhance the safety, environment and productivity of the surrounding residence and the Des Plaines community as a whole. We are hoping this will not have to end in litigation against Des Plaines.







STANDARDS FOR CONDITIONAL USES

The Planning and Zoning Board and City Council review the particular facts and circumstances of each proposed Conditional Use in terms of the following standards. Keep in mind that in responding to the items below, you are demonstrating that the proposed use is appropriate for the site and will not have a negative impact on surrounding properties and the community. Please answer each item completely and thoroughly (two to three sentences each).

1. The proposed conditional use is in fact a conditional use established within the specific zoning district involved;

Yes, the conditional use request is for a used car dealership with minor service /repair center and detail cleaning.

2. The proposed conditional use is in accordance with the objectives of the city's comprehensive plan and this title;

Yes, the commercial/used car dealership, repair service and detail center use is in accordance with the objective of Chapters 2, 3, and 8 of the Des Plaines comprehensive plan. The business will retail showroom with minor repair service and detail center.

3. The proposed conditional use is designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity;

The proposed conditional use will be designed, constructed, operated and maintained so as to be harmonious and appropriate with the existing C-3 commercial character of the general vicinity. The business will be commercial storefront with a warehouse, office space accessible to the public and car lot for the display of vehicles for sale.

4. The proposed conditional use is not hazardous or disturbing to existing neighboring uses.

The proposed conditional use is not hazardous or disturbing to existing neighboring uses. As other neighboring uses, the property will be a commercial storefront and car sale lot open to the public which will be serving the day to day needs of local residents.

5. The proposed conditional use is to be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or the persons or agencies responsible for the establishment of the proposed conditional use shall provide adequately any such services;

Yes, the proposed conditional use will be served adequately by essential public facilities and services. The property is currently connected to all public utilities (gas,water,sewer,etc) and is protected by police and fire services. The property has access to Rand Rd and provides parking for customers and employees.

6. The proposed conditional use does not create excessive additional requirements at public expense for public facilities and services and not be detrimental to the economic welfare of the community;

The proposed conditional use does not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare. The property is already connected to all public utilities and is within the boundaries of police and fire services provided by the Village. There will be minimal to no additional requirements at public expense.

7. The proposed conditional use does not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

The proposed conditional use will be a showroom, car lot, offices and warehouse. The business will be open during normal business hours and the warehouse shall be used for storage. minor repairs and detail cleaning of cars which does not produce excessive noise, smoke, fumes, glare or odor. The business will not produce excessive production of traffic as the business is not a high traffic business and has large parking lot.

8. The proposed conditional use provides vehicular access to the property designed that does not create an interference with traffic on surrounding public thoroughfares;

The proposed conditional use provides vehicular access to the property via Rand Rd. The property has also a large parking lot sufficient for both customers and employees, eliminating any need for customer or employees parking on public streets. The ingress and egress to the property does not create an interference with traffic.

9. The proposed conditional use does not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance; and

The proposed conditional use does not result in destruction, loss, or damage of a historical scenic or historic feature of major importance. The property is not classified as historical per Village.

Attachment 8

10. The proposed conditional use complies with all additional regulations in this title specific to the conditional use requested.

The proposed conditional use does comply with all additional regulations in this title specific to the conditional use being requested. Owner will also designate parking spaces for customers and employees as required and stipulated by the Village.

EXCERPT FROM MINUTES OF THE JANUARY 23, 2024 PLANNING & ZONING BOARD MEETING

Regarding Item Number 6 on the agenda. Chair Szabo announced that the petitioner for Case Number 24-004-CU, 1628 Rand Road, requested a continuance to the February 13, 2024 meeting.

Motion by Board Member Weaver, seconded by Board Member Fowler to continue the case to the February 13, 2024 meeting.

AYES:	Weaver, Szabo, Saletnik, Veremis, Fowler, Catalano
NAYS:	None
ABSENT:	Hofherr
ABSTAIN:	None

MOTION CARRIES

EXCERPT FROM MINUTES OF THE MARCH 12, 2024 PLANNING & ZONING BOARD MEETING

1. Address: 1628 Rand Road Case Number: 24-004-CU

The petitioner is requesting the following items: (i) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii) a conditional use for a new motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

PIN: 09-16-104-022-0000

Petitioner: Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018

Owner: Art Investment LLC, 2020 Berry Lane, Des Plaines, IL 60018

The petitioner requested the continue this case to the April 9th Planning and Zoning Board Meeting.

Motion by Board Member Catalano, seconded by Board Member Weaver to approve a continuance to the April 9th Planning and Zoning Board Meeting.

AYES:Saletnik, Weaver, Catalano, Veremis, SzaboNAYES:NoneABSTAIN:None

MOTION CARRIED

EXCERPT FROM MINUTES OF THE MARCH 12, 2024 PLANNING & ZONING BOARD MEETING

1. Address: 1628 Rand Road Case Number: 24-004-CU

The petitioner is requesting the following items: (i) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii) a conditional use for a new motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

PIN: 09-16-104-022-0000

Petitioner: Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018

Owner: Art Investment LLC, 2020 Berry Lane, Des Plaines, IL 60018

The petitioner requested the continue this case to the April 9th Planning and Zoning Board Meeting.

Motion by Board Member Catalano, seconded by Board Member Weaver to approve a continuance to the April 9th Planning and Zoning Board Meeting.

AYES:Saletnik, Weaver, Catalano, Veremis, SzaboNAYES:NoneABSTAIN:None

MOTION CARRIED

EXCERPT FROM MINUTES OF THE APRIL 9, 2024 PLANNING & ZONING BOARD MEETING

2. Address: 1628 Rand Road Case Number: 24-004-CU

The petitioner is requesting the following items: (i) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii) a conditional use for a new motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

PIN: 09-16-104-022-0000

Petitioner: Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018

Owner: Art Investment LLC, 2020 Berry Lane, Des Plaines, IL 60018

The petitioner requested the continuation of this case to the April 23rd Planning and Zoning Board Meeting. Director Jeff Rogers explained that the petitioner requested this continuation due to a medical issue.

Motion by Board Member Fowler, seconded by Board Member Veremis to approve a continuance to the April 23rd Planning and Zoning Board Meeting.

AYES:Weaver, Saletnik, Veremis, FowlerNAYES:NoneABSTAIN:None

MOTION CARRIED

EXCERPT FROM DRAFT MINUTES OF THE MAY 14, 2024 PLANNING & ZONING BOARD MEETING

1. Address: 1628 Rand Road Case Number: 24-004-CU

The petitioner is requesting the following items: (i.) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii.) a conditional use for a motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

PIN:	09-16-104-022-0000			
Petitioner:	Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018			
Owner:	Art Investment, LLC, 2020 Berry Lane, Des Plaines, IL 60018			
Ward:	#1, Alderman Mark A. Lysakowski			
Existing Zoning:	C-3, General Commercial District			
Existing Land Use:	Multi-tenant commercial building including a trade contractor granite countertop business and cabinet business			
Surrounding Zoning:	North: R-1, Single Family Residential District			
	South: C-3, General Commercial District			
	East: C-1, Neighborhood Shopping / R-1, Single Family Residential Districts			
	West: C-3, General Commercial District			
Surrounding Land Uses:	North: Single-Family Residences			
	South: Columbus Foods & Liquors, Vazquez Dental, Castro Hand Car Wash, and 7-Eleven/Mobil (Commercial)			
	East: A Mother's Touch Learning Academy (Commercial)			
	West: Our Lady of Fatima Center (Commercial)			
Street Classification:	Rand Road is classified as a Minor Arterial Road and Grove Avenue is classified as a Local street.			

Comprehensive Plan:	The Comprehensive Plan designates this site as Commercial.	
Case History:	At their January 23, 2024 meeting, the Planning & Zoning Board (PZB) continued the applicant's case without discussion to their regular meeting on February January 23, 2024.	
	The PZB opened the public hearing for this case at their February 23, 2024 meeting. The applicant's proposal and materials were presented. The PZB requested revisions to the plans provided to clarify the scope of the improvements to the site, as well as some clarifications to the proposed operations. A review of staff's recommendations for revisions to the site plan including a potential change to the off-street circulation pattern was discussed. The public hearing was continued to the PZB's March 12, 2024 meeting.	
	At their regular meeting on March 12, 2024, the PZB inquired about the status of the applicant's revised materials prior to continuing the public hearing to their April 9, 2024 meeting.	
	At their regular meeting on April 9, 2024, the applicant relayed a request to continue the case in writing and the PZB subsequently continued the case to their April 23, 2024 meeting.	
	The PZB did not have a quorum to open their April 23, 2024 meeting. To facilitate additional consideration of the request, staff published a new legal notice, mailed notice to adjacent property owners, and posted signage upon the property in accordance with Code requirements to facilitate additional consideration by the PZB at their regular meeting on May 14, 2024.	
Case History:	In advance of the April 23, 2024 meeting, the applicant confirmed their intent to proceed with a revised site plan.	
	The applicant's revised plans rectify many of the issues noted in the prior staff report. The applicant has provided two exhibits for consideration. The first exhibit entitled "Existing Conditions" notes existing site improvements while the second exhibit entitled "Proposed Site Plan" primarily shows proposed improvements but continues to reflect some of the existing improvements.	
	The revised site plan can be summarized as follows:	
	A. Motor Vehicle Sales An automobile sales use would be introduced in the tenant space previously occupied by the	

custom cabinet showroom. The new conditional use ordinance would allow both the existing custom countertop trade contractor & showroom use and the proposed motor vehicle sales use upon the subject property and would replace the prior conditional use ordinance authorizing only the trade contractor use.

- B. Fence Relocation | the existing privacy fence would be relocated to the north to provide additional parking stalls on the south side of the fence to be used for the display of vehicles. No outdoor storage other than vehicles displayed for sale will be proposed outside of the fence.
- C. Parking Lot Expansion | A small extension of the parking lot would occur at the southwest corner of the site to accommodate the minimum width for a two-way drive aisle. The proposed pavement extension would provide additional taper for vehicle movements and would comply with the minimum two-way drive aisle width required per Code of 22.0 feet.

The applicant has decided not to reverse the orientation of the proposed parking stalls at the west end of the site to connect the two parking areas to allow on-site/off-street vehicle circulation between the existing parking area and proposed vehicle display area. The applicant prefers to segregate the vehicle display area from the employee/customer off-street parking area to prevent damage to display vehicles from truck & customer traffic maneuvers. Staff recommends the PZB consider whether the applicant's proposed design is appropriate or if site circulation would be improved by reversing the orientation of the proposed parking row so that stalls would be west of the drive aisle.

To address staff's prior concerns relating to the lack of adequate offstreet circulation area for drop-off of vehicles from flatbed tow trucks to occur entirely on private property without loading/unloading in Rand Road right-of-way or reversing of vehicles into the right-of-way, the applicant has agreed to schedule vehicle deliveries by flat bed two truck during business hours and to keep the area of storage behind the fence free from obstructions to facilitate three-point turnarounds for trucks so that no reversing into Rand Road will occur.

If the proposed site plan, parking stall locations, and vehicle display areas are approved as presented, staff recommends that the recommendation stipulate that the applicant provide access and reserve area free from storage to accommodate a three-point turnaround for flat-bed tow trucks. This would require accommodations for access to any gate locks or hours of operation restrictions for vehicle deliveries only during business hours so access to the turnaround area can be ensured.

Conditions relating to removal or modification of existing noncompliant displays and outdoor storage, assignment of addresses, and other details remain listed in the recommendation for consideration by the PZB. The applicant has removed the storage unit that was previously stored upon the property.

The applicant will be available at the public hearing to provide testimony in support of their request.

Project Description: The petitioner, Urszula Topolewicz, has requested Conditional Use Permits to amend an existing trade contractor use and operate a proposed motor vehicle sales use, both at 1628 Rand Road. In accordance with the proposed motor vehicles sales use, the applicant would perform vehicle maintenance and detailing of vehicles offered for sale.

The subject property is located within the C-3 General Commercial district. Both a trade contractor use and a motor vehicle sales use are a conditional use in the C-3 zoning district. The subject property contains a multi-tenant building with an off-street surface parking area on the west side of the property with additional on-street parking east of the property along Grove Avenue, each as depicted on the attached Plat of Survey. The subject property is located along Rand Road at the northwest corner of the Rand Road/Grove Lane intersection. The subject property is currently accessed by three curb cuts, two from Rand Road and one from Grove Lane. The subject property lies entirely within the 1% annual chance floodplain (Zone AE).

Prior Approvals

In 2021, the applicant received approval of a conditional use permit via Ordinance Z-36-21 for a Trade Contractor use upon the subject property. Among various conditions, the Ordinance included a restriction stipulating that "outdoor storage of raw materials or fabricated goods is strictly prohibited." A copy of this Ordinance is attached for reference.

In 2022, the applicant received approval of several zoning variations relating to ground signage and wall signage via Ordinance Z-27-22. The signage associated with this Ordinance has since been installed, including wall signage for two businesses and an electronic message board (EMB) sign. In accordance with the proposed scope of work at this time, the face of one of the existing wall signs would be removed and replaced with new signage for the proposed motor vehicle sales business.

Concurrently in 2022, the applicant requested an amendment to Ordinance Z-36-21 to strike the restriction stipulating that "outdoor storage of raw materials or fabricated goods is strictly prohibited." The request proceeded through the Planning & Zoning Board to the City Council as draft Ordinance Z-27-22 but was tabled by the City Council in September 2022 with instruction to the applicant to address various engineering concerns. A proposed solution to the floodplain restrictions has not yet been provided, the tabled Ordinance has not yet been scheduled for consideration by the City Council, and the condition from Ordinance Z-36-21 restricting outdoor storage remains in effect.

Existing Violations

Several violations of the Municipal Code currently present upon the property would need to be rectified before a business registration for the proposed motor vehicle sales use could be approved. Also, these violations would need to be rectified to avoid additional enforcement action. The current violations include the following:

- a. A storage container upon the property which was in violation of the accessory use requirements and floodplain requirements of the Municipal Code has been removed from the premises.
- b. There exist two outdoor displays of fabricated goods in violation of the floodplain requirements and the requirements of Ordinance Z-36-21. If outdoor display is proposed, said display must be authorized in accordance with this conditional use request and installed in a manner which complies with the requirements of Title 14 of the Municipal Code including compliance with all floodplain requirements.
- c. There presently exists temporary outdoor storage from timeto-time of raw materials or fabricated goods in violation of the

floodplain requirements and Ordinance Z-36-21. If outdoor storage is proposed, said storage must be authorized in accordance with this conditional use request and installed in a manner which complies with the requirements of Title 14 of the Municipal Code including compliance with all floodplain requirements.

Current Proposal

The applicant has provided an executive summary, a floor plan for the proposed motor vehicle sales use, and a proposed site plan with additional details regarding the interior layout of the modified tenant spaces. The draft motion included in this report includes conditions which would need to be rectified before the proposed motor vehicle sales use could commence.

Various dimensions noted within the applicant's narrative and on the proposed plans are not depicted to scale. The area of the building depicted on the proposed site plan scales to approximately 12,425 square feet where the applicant notes in their narrative that the building area is approximately 15,300 square feet.

The trade contractor use would occupy the north and east areas of the existing building. This area scales to approximately 8,915 square feet but is noted as 11,400 square feet on the applicant's site plan.

The proposed motor vehicle sales use including accessory detailing and repair/service uses would occupy the southwest area of the existing building. This area scales to approximately 3,480 square feet but is noted as 3,900 square feet on the applicant's site plan.

The applicant has indicated that vehicles would be displayed within the proposed showroom. The plan(s) submitted in accordance with this permit should demonstrate that the display of vehicles within the showroom would maintain accessible routes through the showroom floor area.

The proposed parking layout would introduce new parking stalls along the east side of a drive aisle west of the existing off-street public parking stalls. The proposed drive aisle would not comply with the minimum aisle widths for two-way traffic. If the proposed site plan alterations and land use are supported, the drive aisle should be required to be widened to a minimum of 22.0 feet south of the southernmost parking stall as depicted on the revised site plan provided in advance of the April 24, 2024 meeting. A building permit would be needed before any parking lot improvements could commence.

Required Parking

The following parking regulations apply to this request pursuant to Section 12-9-7 of the City of Des Plaines Municipal Code:

- One vehicle stall for every vehicle displayed for sale outdoors (16 vehicles outdoors = 16 vehicle stalls)
- One parking stall for every 500 square feet of showroom and office floor area for motor vehicle sales (2,350 square feet = 5 stalls);
- One parking stall for each 20 vehicle stalls within the showroom for motor vehicle sales (850 square feet = 1 stall);
- One parking stall for every 20 vehicles displayed for sale outdoors upon the premises (16 vehicles outdoors = 1 stall); and
- Zero parking stalls for the trade contractor use.

In accordance with minimum off-street parking provisions, 16 offstreet parking stalls would be required, including one accessible parking stall. The applicant proposes 23 off-street parking stalls. The subject property is adjacent to an additional 13 public on-street parking stalls within the Grove Lane right-of-way. The proposed motor vehicle sales use shall not be permitted to display or store vehicles for sale within the public right-of-way.

Hours of Operation

The existing Granite Place & Quartz LLC business operates from 9 a.m. to 5 p.m., Monday through Friday, from 9 a.m. to 3 p.m. on Saturday, and is closed on Sunday.

The proposed motor vehicle sales use would operate from 9 a.m. to 9 p.m., Monday through Saturday and would be closed on Sunday.

Please see the attached applicant's Project Narrative for more details.

Compliance with the Comprehensive Plan

The proposed project, including the proposed the site improvements, address various goals and objectives of the 2019 Comprehensive Plan including the following aspects:

Future Land Use Plan:

- This property is designated as Commercial on the Future Land Use Plan. The Future Land Use Plan strives to create a well-balanced development area with a healthy mixture of commercial uses.
- The subject property is located along the defined Rand Road commercial corridor with single-family residences to the north, multi-family residences to the east, and commercial development to the east, south, and west. The subject property contains a multi-tenant building located between established commercial developments along Rand Road. The request would assist in the retention of a new commercial business at this location and provide additional retail goods and services for the residents of Des Plaines.

• Landscaping and Screening:

- The Comprehensive Plan seeks to encourage and actively pursue beautification opportunities and efforts, including the installation of landscaping, street furniture, lighting, and other amenities, to establish a more attractive shopping environment and achieve stronger corridor identity in Des Plaines.
- The existing site contains landscaping along the south of the property and foundation landscaping adjacent to the east building footprint.
- The applicant proposes to relocate an existing privacy fence from its current location along the front lot line to a point north of the new row of parking along the west end of the site.

While the aforementioned aspects represent a small portion of the goals and strategies of the Comprehensive Plan, there is a large emphasis on improving existing commercial developments and enhancing commercial corridors throughout Des Plaines.

Conditional Use Findings: Conditional Use requests are subject to the standards set forth in Section 12-3-4(E) of the Zoning Ordinance.

Rationale for how the proposed amendments would satisfy the standards is provided below and in the attached petitioner responses to standards. The Board may use the provided responses as written as its rationale, modify, or adopt its own.

1. The proposed Conditional Use is in fact a Conditional Use established within the specific Zoning district involved:

Comment: The proposed uses are classified as a Trade Contractor use and a motor vehicle sales use, respectively. Both a Trade Contractor and Motor Vehicle Sales are a Conditional Use in the C-3 zoning district.

2. The proposed Conditional Use is in accordance with the objectives of the City's Comprehensive Plan:

<u>*Comment:*</u> The proposed Trade Contractor use and motor vehicle sales use provide both retailand service-oriented uses that primarily serve day-to-day needs of local residents by increasing commercial opportunities for residents in Des Plaines. Additionally, the subject property is located near the River Road & Rand Road commercial corridors, which are major corridors in Des Plaines.

3. The proposed Conditional Use is designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity:

<u>*Comment:*</u> The existing Trade Contractor use and proposed motor vehicle sales use are designed, constructed, operated, and maintained to be harmonious and appropriate in appearance to surrounding commercial uses. The proposal includes enhancements to the site as a whole including modifications to the parking area.

4. The proposed Conditional Use is not hazardous or disturbing to existing neighboring uses:

<u>Comment:</u> The proposed Trade Contractor use and motor vehicle sales use would not be hazardous or distributing to neighboring uses as all activities including the fabrication of materials will take place inside the building except for potential storage within the extents of a privacy fence and outdoor display of vehicles for sale within the parking lot. Refer to the suggested conditions of approval for additional avenues for ensuring safety and harmony with the neighboring uses.

5. The proposed Conditional Use is to be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or, agencies responsible for establishing the Conditional Use shall provide adequately any such services:

<u>Comment:</u> The subject property is served adequately by essential public facilities and services since it is currently accessible by two streets and three total curb cuts as well as necessary public utilities. The proposed uses will not affect the existing public facilities and services for this property.

6. The proposed Conditional Use does not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic wellbeing of the entire community:

<u>Comment</u>: The proposed uses will not create excessive additional requirements at the public expense and will not be detrimental to economic well-being of the community.

7.The proposed Conditional Use does not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke fumes, glare or odors:

<u>Comment:</u> The petitioner is proposing outdoor storage and display of raw materials and finished products. If such storage and display is to be considered, such storage and display must be conducted in accordance with the requirements of Title 14 of the Code. Storage or display of material below the base flood elevation (BFE) cannot be permitted. Refer to the suggested conditions of approval for additional avenues for ensuring compliance with applicable regulations.

8. The proposed Conditional Use provides vehicular access to the property designed so that it does not create an interference with traffic on surrounding public thoroughfares:

<u>Comment:</u> The proposed site plan introduces new parking areas which would potentially increase traffic volume at the existing west curb cut. The design of the western curb cut would need to be modified to accommodate a two-way drive aisle with a minimum width of 22.0 feet. An alternate site plan with parking along the west of the west parking row would connect the two parking areas and allow for circulation within the site without the need to leave the site onto Rand Road to access the west drive aisle. A suggested condition of approval requires a modified site plan to confirm all requirements are met and safe, efficient circulation is provided.

9. The proposed Conditional Use does not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance:

<u>*Comment:*</u> The subject property is currently developed and improved with a building and surface parking area. The proposed uses will not lead to the loss or damage of natural, scenic, or historic features of major importance on this property.

10. The proposed Conditional Use complies with all additional regulations in the Zoning Ordinance specific to the Conditional Use requested:

<u>Comment:</u> There exist several open violations upon the property related to an existing illegal nonconforming accessory storage unit use and outdoor display/storage of goods. Provided the storage unit is removed and outdoor storage and display is conducted in accordance with the requirements of all applicable codes and ordinances, a modified plan for display and storage could meet the regulations of the Zoning Ordinance.

Recommendation: Staff recommends approval of the Conditional Use Permit for a trade contractor use and motor vehicle use at 1628 Rand Road as amended based upon a review of the information presented by the applicant and the findings made above, as specified in Section 12-3-4(E) (Standards for Conditional Uses) of the City of Des Plaines Municipal Code with the following conditions:

- 1. The petitioner shall implement all site improvements shown on the proposed undated site plan and any amendments required by the Planning & Zoning Board.
- 2. The applicant shall provide plans and specifications for review and secure permits for all site work governed by city codes and ordinances (pavement, exterior doors/window systems, mechanical/electrical/plumbing/structural, civil engineering, etc.). All proposed

improvements and modifications shall be in full compliance with all applicable codes and ordinances.

- 3. No materials shall be stored outside of the extents of the proposed privacy fence enclosure.
- 4. All outdoor storage and/or displays shall be permissible only in full compliance with the requirements of Title 14 of the Municipal Code including raising of stored materials above the base flood elevation (BFE).
- 5. Display and storage of vehicles or materials shall be permissible in designated areas on private property only and shall not be permissible within required drive aisles or customer parking stalls, or within the public right-of-way. All motor vehicles stored on the site must be operable and stored on a dust-free, hard surface.
- 6. The applicant shall coordinate with the City regarding the assignment of unique unit addresses for the two tenant spaces comprising the existing building upon the property.
- 7. No more than sixteen (16) motor vehicles may be displayed for sale on the Subject Property at one time. Through signs, striping, or combination, these sixteen (16) spaces should be identified and reserved. Adding additional motor vehicle sales spaces would require an amendment to the Conditional Use Permits. Sufficient parking spaces to meet the minimum off-street parking requirements for the Proposed Uses must be provided on the Subject Property at all times.

Planning and Zoning Board Procedure: Under Section 12-3-4(D) (Procedure for Review and Decision for Conditional Uses) of the Zoning Ordinance, the Planning and Zoning Board has the authority to *recommend* that the City Council approve, approve subject to conditions, or deny the above-mentioned conditional use requests for a trade contractor use and motor vehicle sales use at 1628 Rand Road. The City Council has final authority on the proposal.

Applicant (Urzsula and Peter) stated that they are here pursuant to the last continuance.

Director Jeff Rogers presented the case. There are some small changes, including a clarification of the flood plain. They are in Flood Zone AE, which is a 100-year flood plain. They are not doing work in the affected flood plain area and have presented various solutions on their site plan. They have revised their site plan, so that the parking will be reconfigured.

Since the previous presentation, the applicant has demonstrated how the door system would work for the entry and removal of cars from the interior showroom area. The applicant has also worked with staff to find a solution for their outdoor storage. The storage racks will be modified so that they will be above the base flood elevation, meeting requirements.

The PZB can recommend approval, approval with conditions, or denial.

The proposed site plan allows for a truck to make a 3-point turn to exit the location.

Acting Chairman Saletnik asked if the storage racks are above the base flood elevation. Director Rogers explained that the racks would be above the flood level after they're modified.

Member Catalano asked the applicant if they are good with the conditions and they stated yes. Member Weaver stated that he is in favor of Condition 8 in particular.

Acting Chairman Saletnik asked if there were any further comments, and no one from the audience came forward.

The petitioner asked about condition 8, specifically what if a truck arrives early in the morning or late at night.

Director Rogers stated if the vehicle has someone there to open the gate and allow for the 3-point turn out of there, then it is not an issue.

The petitioner stated there is space elsewhere. Director Rogers said if they are not creating a traffic back up onto Rand Road, that is important.

Member Weaver stated his interpretation is that we don't want trucks outside of business hours, and that it is also for the benefit of neighbors. The petitioner said it would not be intended, but that if it happens, she would try to limit the disruption.

Motion by Member Weaver, seconded by Member Catalano to recommend approval of the requests to City Council, subject to the 8 conditions drafted by staff.

AYES:Weaver, Catalano, Veremis, SaletnikNAYES:NoneABSTAIN:Fowler

CITY OF DES PLAINES

ORDINANCE Z - 10 - 24

AN ORDINANCE GRANTING AN AMENDMENT TO AN EXISTING CONDITIONAL USE PERMIT TO ALLOW MOTOR VEHICLE SALES AND A TRADE CONTRACTOR USE LOCATED AT 1628 RAND ROAD, DES PLAINES, ILLINOIS.

WHEREAS, Granite Place & Quartz, LLC and Urszula Topolewicz (collectively, the "*Petitioner*") are the lessees of the property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*");

WHEREAS, the Subject Property is located in the C-3 General Commercial District of the City ("C-3 District");

WHEREAS, on June 7, 2021, the City Council adopted Ordinance Z-36-21 ("Conditional Use Ordinance"), approving a conditional use permit to allow a trade contractor use on the Subject Property ("Conditional Use Permit");

WHEREAS, the Petitioner desires to store finished products on the Subject Property; and

WHEREAS, the Petitioner also desires to operate a motor vehicle sales use including the outdoor display of vehicles on the Subject Property; and

WHEREAS, pursuant to Section 12-7-3.K of the Des Plaines Zoning Ordinance ("Zoning Ordinance"), motor vehicle sales are permitted in the C-3 District only pursuant to a conditional use permit approved by the City Council; and

WHEREAS, the Petitioner submitted an application to the City of Des Plaines Department of Community and Economic Development ("Department") to amend the Conditional Use Permit to allow the outdoor storage and display of finished products and motor vehicle sales on the Subject Property ("Amended Conditional Use Permit"), in accordance with Section 12-3-4 of the Zoning Ordinance;

WHEREAS, the Subject Property is owned by Art Investment, LLC ("Owner"), which has consented to the Petitioner's application;

WHEREAS, the Petitioner's application was referred by the Department to the Planning and Zoning Board of the City of Des Plaines ("*PZB*") within 15 days after the receipt thereof;

WHEREAS, within 90 days from the date of the Petitioner's application a public hearing was held by the PZB beginning on January 23, 2024 pursuant to notice published in the *Des Plaines Journal* on January 3, 2024;

WHEREAS, within 90 days from the date of the Petitioner's revised application a public hearing was held by the PZB on May 14, 2024 pursuant to notice published in the *Des Plaines Journal* on April 24, 2024;

WHEREAS, notice of the public hearing was mailed to all property owners within 500 feet of the Subject Property;

WHEREAS, during the public hearing, the PZB heard testimony and received evidence with respect to how the Petitioner intended to satisfy and comply with the applicable provisions of the Zoning Ordinance;

WHEREAS, pursuant to Section 12-3-4 of the Zoning Ordinance, Community and Economic Development Staff Memorandum filed a written report with the City Council on May 24, 2024, summarizing the testimony and evidence received by the PZB and stating the PZB's recommendation, by a vote of 5-0, to approve the Petitioner's application for the Amended Conditional Use Permit, subject to certain terms and conditions;

WHEREAS, the Petitioner made certain representations to the PZB with respect to the proposed Amended Conditional Use Permit, which representations are hereby found by the City Council to be material and upon which the City Council relies in granting this request for the Amended Conditional Use Permits; and

WHEREAS, the City Council has considered the applicable standards for conditional use permits set forth in the Zoning Ordinance and the Community and Economic Development Staff Memorandum dated June 3, 2024, including the attachments and exhibits thereto, and has determined that it is in the best interest of the City and the public to grant the Petitioner's application in accordance with the provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des

Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1. RECITALS. The recitals set forth above are incorporated herein by

reference and made a part hereof, the same constituting the factual basis for this Ordinance.

SECTION 2. LEGAL DESCRIPTION OF SUBJECT PROPERTY. The Subject

Property is legally described as follows:

LOTS 14 TO 18, BOTH INCLUSIVE, (EXCEPT THE SOUTHWESTERLY 17.0 FEET THEREOF) IN BLOCK 3 IN RIVER-RAND ROAD SUBDIVISION OF LOTS 1 TO 8, INCLUSIVE, IN BLOCK 18 (OR BENNET BLOCK) AND LOT 1 TO 13, EXCLUSIVE IN, BLOCK 18 (OR RAND BLOCK) IN PARK SUBDIVISION OF PARTS OF SECTIONS 16 AND 17, TOWNHSIP 41 NORTH,

RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

PIN: 09-16-104-022-0000

Commonly known as: 1628 Rand Road, Des Plaines, Illinois.

SECTION 3. AMENDED CONDITIONAL USE PERMIT. Subject to and contingent upon the conditions, restrictions, limitations and provisions set forth in Section 4 of this Ordinance, the City Council grants the Petitioner an Amended Conditional Use Permit to allow a trade contractor use including the outdoor storage and display of finished products and motor vehicle sales including the outdoor display of vehicles on Subject Property. The Amended Conditional Use Permit granted by this Ordinance is consistent with and equivalent to a "special use" as referenced in Section 11-13-25 of the Illinois Municipal Code, 65 ILCS 5/11-13-25.

SECTION 4. CONDITIONS. The Amended Conditional Use Permit granted in Section 3 of this Ordinance shall be, and is hereby, expressly subject to and contingent upon the following conditions, restrictions, limitations, and provisions:

A. <u>Compliance with Law and Regulations</u>. The development, use, operation, and maintenance of the Subject Property, by the Petitioner must comply with all applicable City codes and ordinances, including, without limitation, the Conditional Use Ordinance, as the same have been or may be amended from time to time, except to the extent specifically provided otherwise in this Ordinance.

B. <u>Compliance with Plans</u>. Except for minor changes and site work approved by the City Director of Community and Economic Development in accordance with all applicable City standards, the development, use, operation, and maintenance of the Subject Property by the Petitioner must comply with the following plans as may be amended to comply with Section 4.C of this Ordinance: 1. The "Final Site Plan" prepared by the Owner, consisting of one sheet, with a latest revision date of February 28, 2024, attached to and by this reference made a part of this Ordinance as **Exhibit A** (*"Site Plan"*); and

2. The "Floor Plan" prepared by the Owner, consisting of one sheet, with a latest revision date of February 28, 2024, attached to and by this reference made a part of this Ordinance as **Exhibit B** (*"Floor Plan"*).

C. <u>Additional Conditions</u>. The development, use, and maintenance of the Subject Property shall be subject to and contingent upon the following additional conditions:

1. All proposed improvements shown on the Site Plan must be constructed in full compliance with all applicable codes and ordinances. Plans and drawings may require modification in order to comply with current City codes and ordinances.

2. The Petitioner must provide plans and specifications for review and secure permits issued by the CIty for all site work governed by City codes and ordinances, including, without limitation for the pavement, exterior doors and window systems, and mechanical, electrical, plumbing structural, civil engineering plans.

3. No materials may be stored outside of the proposed privacy fence enclosure as shown on the Site Plan.

4. Outdoor storage and displays on the Subject Property must be conducted in compliance with this Ordinance and Title 14 of City Code of the City of Des Plaines, including, without limitation, raising stored materials above the base flood elevation (BFE).

5. Display and storage of vehicles or materials may only be conducted in the designated areas on private property only and is prohibited within required drive aisles,

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customer parking stalls, and the public right-of-way. All motor vehicles stored on the Subject Property must be operable and stored on a dust-free, hard surface.

6. The Petitioner must coordinate with the City regarding the assignment of unique unit addresses for the two tenant spaces comprising the existing building upon the Subject Property.

7. No more than 16 motor vehicles may be displayed for sale on the Subject Property at one time. Through signs, striping, or combination thereof, the 16 vehicle display spaces must be identified and reserved. The addition of more than 16 motor vehicle sales spaces may only be permitted pursuant to an amendment to the Conditional Use Permit. Sufficient parking spaces to meet the minimum off-street parking requirements as required by the Zoning Ordinance for the Proposed Uses must be provided on the Subject Property at all times. The 16 motor vehicle sales spaces do not count toward satisfying the minimum required off-street parking spaces.

8. Deliveries of vehicles by flatbed truck must be scheduled during business hours and within the storage area on the Subject Property, which must be maintained free from obstructions to facilitate three-point turnarounds for trucks so that trucks do not need to reverse into Rand Road.

SECTION 5. RECORDATION; NON-TRANSFERABILITY. The privileges, obligations, and provisions of each and every section and requirement of this Ordinance are for and shall inure solely to the benefit of Petitioner. Nothing in this Ordinance shall be deemed to allow the Petitioner to transfer any of the rights or interests granted herein to any other person or entity without the prior approval of the City Council by a duly adopted amendment to this Ordinance.

SECTION 6. NONCOMPLIANCE.

A. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of, any of the provisions of this Ordinance shall be fined not less than seventy-five dollars (\$75.00) or more than seven-hundred and fifty dollars (\$750.00) for each offense. Each and every day that a violation of this Ordinance is allowed to remain in effect shall constitute a complete and separate offense. In addition, the appropriate authorities of the City may take such other action as they deem proper to enforce the terms and conditions of this Ordinance, including, without limitation, an action in equity to compel compliance with its terms. Any person, firm or corporation violating the terms of this Ordinance shall be subject, in addition to the foregoing penalties, to the payment of court costs and reasonable attorneys' fees.

B. In the event that the Petitioner or Owner fails to develop or maintain the Subject Property in accordance with the plans submitted, the requirements of the Zoning Ordinance, or the conditions set forth in Section 4 of this Ordinance, the Conditional Use Ordinance as amended by this Ordinance, the Amended Conditional Use Permit granted in Section 3 of this Ordinance may be revoked after notice and hearing before the Zoning Administrator of the City, all in accordance with the procedures set forth in Section 12-4-7 of the Zoning Ordinance. In the event of revocation, the development and use of the Subject Property will be governed solely by the regulations of the C-3 District. Further, in the event of such revocation of the Amended Conditional Use Permit, the City Manager and City's General Counsel are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Petitioner and Owner acknowledge that public notices and hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice and hearing required by Section 12-4-7 of the Zoning Ordinance is provided to the Petitioner and Owner.

SECTION 7. EFFECTIVE DATE.

A. This Ordinance shall be in full force and effect only after the occurrence of the following events:

- 1. its passage and approval by the City Council in the manner provided by law;
- 2. its publication in pamphlet form in the manner provided by law;

3. the filing with the City Clerk by the Petitioner and the Owner, not less than 60 days after the passage and approval of this Ordinance, of an unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance, and demonstrating the Petitioner's and Owner's consent to its recordation. Said unconditional agreement and consent shall be in substantially the form attached to, and by this reference made a part of, this Ordinance as **Exhibit C**; and

4. at the Petitioner's sole cost and expense, the recordation of this Ordinance together with such exhibits as the City Clerk deems appropriate, with the Office of the Cook County Recorder.

B. In the event that the Petitioner and the Owner do not file with the City Clerk a fully executed copy of the unconditional agreement and consent referenced in Section 7.A.3 of this Ordinance, within 60 days after the date of passage of this Ordinance by the City Council, the City Council shall have the right, in its sole discretion, to declare this Ordinance null and void and of no force or effect.

SECTION 8. SEVERABILITY. If any paragraph, section, clause or provision of this Ordinance is held invalid, the remainder shall continue in full force and effect without affecting the validity of the remaining portions of the Ordinance.

PASSED this ______ day of ______, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

ATTEST:

MAYOR

CITY CLERK

Published in pamphlet form this _____, 2024.

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

EXHIBIT A

SITE PLAN

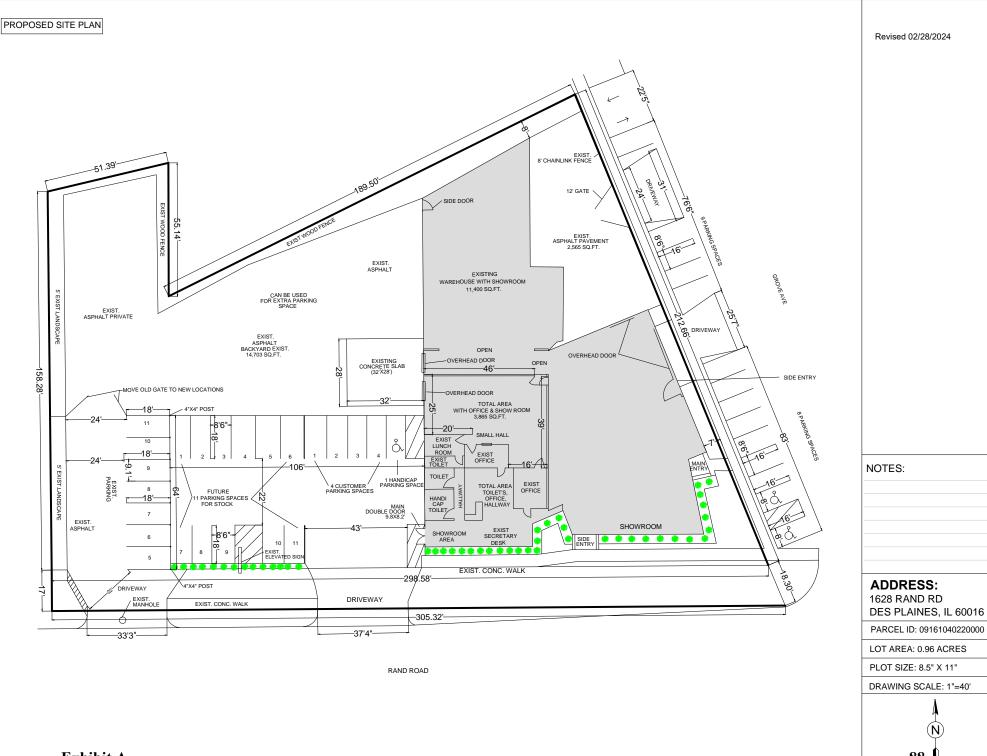
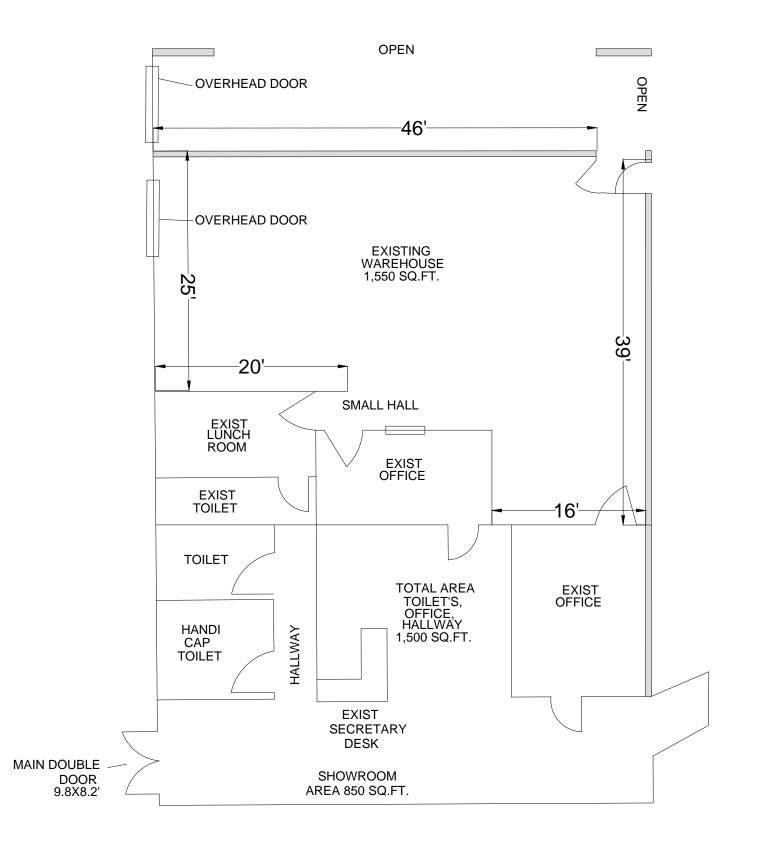


Exhibit A

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EXHIBIT B

FLOOR PLAN



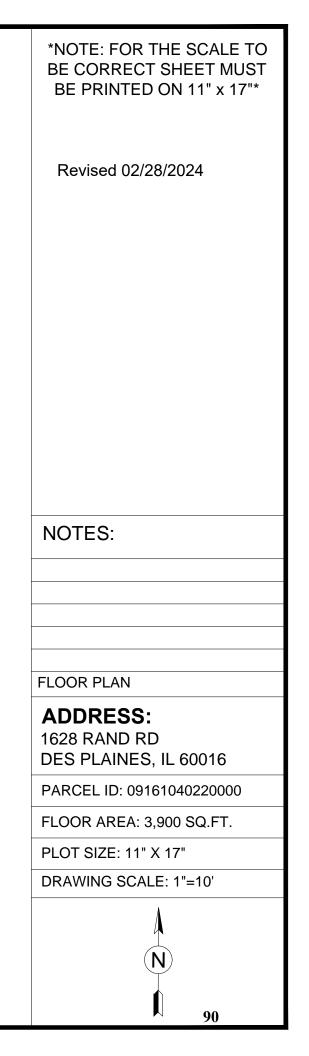


EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

TO: The City of Des Plaines, Illinois (*"City"*):

WHEREAS, Granite Place & Quartz, LLC and Urszula Topolewicz (collectively, the "*Petitioner*") applied to the City of Des Plaines for an amendment to an existing conditional use permit to allow for outdoor storage and display of finished products related to a Trade Contractor Use and motor vehicle sales and outdoor display ("*Amended Conditional Use Permit*") on that certain property commonly known as 1628 Rand Road, Des Plaines, Illinois ("*Subject Property*");

WHEREAS, the Subject Property is owned by Art Investment, LLC ("Owner"), which consented to the Petitioner's application;

WHEREAS, Ordinance No. Z-10-22 adopted by the City Council of the City of Des Plaines on ______, 2024 ("Ordinance"), grants approval of the Amended Conditional Use Permit to allow motor vehicle sales and outdoor display of finished products on the Subject Property, subject to certain conditions; and

WHEREAS, the Petitioner and the Owner each desires to evidence to the City its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in said Ordinance, and its consent to recording the Ordinance and this Unconditional Agreement and Consent against the Subject Property;

NOW, THEREFORE, the Petitioner and the Owner do hereby agree and covenant as follows:

- 1. Petitioner and Owner hereby unconditionally agree to accept, consent to and abide by all of the terms, conditions, restrictions, and provisions of that certain Ordinance No. Z-10-24, adopted by the City Council on ______, 2024.
- 2. Petitioner and Owner acknowledge and agree that the City is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the City's review and approval of any plans for the Subject Property, or the issuance of any permits for the use and development of the Subject Property, and that the City's review and approval of any such plans and issuance of any such permits does not, and shall not, in any way, be deemed to insure Petitioner or Owner against damage or injury of any kind and at any time.
- 3. Petitioner and Owner acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any such revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the procedures required by Section 12-4-7 of the City's Zoning Ordinance are followed.

- 4. Petitioner agrees to and do hereby hold harmless and indemnify the City, the City's corporate authorities, and all City elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (a) the City's review and approval of the Ordinance and any plans and issuance of any permits, (b) the procedures followed in connection with the adoption of the Ordinance, (c) the development, construction, maintenance, and use of the Subject Property, and (d) the performance by Petitioner of its obligations under this Unconditional Agreement and Consent.
- 5. Petitioner hereby agrees to pay all expenses incurred by the City in defending itself with regard to any and all of the claims mentioned in this Unconditional Agreement and Consent. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the City.

ATTEST:	GRANITE PLACE & QUARTZ, LLC
By:	By:
	Its:
ATTEST:	URSZULA TOPOLEWICZ
By:	By:
	Its:
ATTEST:	ART INVESTMENT, LLC
By:	By:
	Its:

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date:	June 10, 2024
To:	Dorothy Wisniewski, City Manager
From:	Jeff Rogers, Director of Community and Economic Development
Cc:	Stewart Weiss, Partner, Elrod Friedman, General Counsel
Subject:	Consenting to and Authorizing Filing of a Property Tax Appeal for the Des Plaines Theater and Associated Leased Premises at 1470-1476 and 1486-1486 1/2 Miner Street

Issue: The City of Des Plaines owns the properties at 1470-1476 and 1486-1486 1/2 Miner Street commonly known as the Des Plaines Theater & Rockstock, respectively. The City entered into a lease agreement in 2019 via Resolution R-107-19 for the properties with a tenant, Onesti Entertainment Corporation, who among other obligations is responsible for paying all property taxes that may be assessed against the properties.

On behalf of Onesti Entertainment Group, the tenant's attorney is requesting the City's consent and authorization, as owner and landlord for the properties, for the filing of a property tax appeal by the tenant in the interest of reducing the assessed value of the property and the property taxes subsequently owed.

Analysis: The lease agreement established an initial lease term of five years beginning October 2021 and ending November 1, 2026. The lease agreement authorizes up to one extension comprised of an additional five years upon agreement of the parties and at the sole discretion of the City of Des Plaines.

In accordance with the Lease Agreement between the parties, a.) the City of Des Plaines is the Landlord; and b.) no protest or appeal from the County's assessment can be made by the Tenant without the Landlord's consent. An appeal by the Tenant will not impair the City's interest in the property nor will an appeal prevent the City from exerting any rights it has to or over the property. The theater properties are not in an active Tax Increment Finance (TIF) district so an appeal will not impair any expected increment.

The property taxes owed for the subject property include the following:

Property	Tax Year 2021	Tax Year 2022	Totals
Des Plaines Theater, 1470-1476 Miner	\$16,771.58	\$84,069.88	\$100,841.46
Rockstock, 1486-1486 1/2 Miner	\$6,907.01	\$34,622.78	\$41,529.79
		Combined Total	\$142,371.25

Pending the requested appeal, the property taxes summarized above are due August 1, 2024.



City Council Action: If the City Council agrees with the tenant's rationale and request, it may approve Resolution R-120-24 to authorize the tenant's filing of a Property Tax Appeal.

Attachments

Attachment 1: Request for Extension from George Reveliotis on behalf of Ron Onesti, Onesti Entertainment Group

Resolution R-120-24 Exhibit A: Legal Description of Premises Exhibit B: Lease Agreement From: George Reveliotis Sent: Wednesday, June 5, 2024 10:14 AM To: Joanne Mendoza Cc: Ron Onesti; Marianthi Proutsos Subject: Des Plaines Theatre - Mr. Ron Onesti

Dear Ms. Wisniewski,

I hope all is well. I represent Mr. Ron Onesti in his ad valorem property tax responsibilities, and per his direction, have reviewed the lease to prepare for a potential tax appeal for the subject property before the Cook County assessing officials. (I have attached the lease for easy access and review).

Although Mr. Onesti is responsible to pay all property taxes levied against the theater as the lease is triple net in nature, section 6C on page 5 of the lease stipulates that Tenant may not protest the assessment ... without written consent of Landlord...

Based on this stipulation, Mr. Onesti respectfully asks the municipality of Des Plaines for Landlord's consent to appeal the assessment on the theater.

We hope and pray that the municipality allows Mr. Onesti to appeal the assessment so that the final tax is a fair one.

If you have any questions, please do not hesitate to contact me at the below number or directly at (708) 557-2277.

Thank you,

George N. Reveliotis Reveliotis Law, P.C. 1030 Higgins Road Suite 101 Park Ridge, Illinois 60068

P - 312-230-0160 F - 312-230-0161

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CITY OF DES PLAINES

RESOLUTION R - 120 - 24

RESOLUTION CONSENTING TO AND AUTHORIZING FILING OF PROPERTY TAX APPEAL FOR DES PLAINES THEATRE AND ASSOCIATED LEASED PREMISES.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the City is the owner the real property commonly known as the Des Plaines Theatre and located at 1476 Miner Street, 1486 Miner Street, and 1486 1/2 Miner Street, Des Plaines, Illinois 60016 (collectively, the "*Premises*"); and

WHEREAS, Onesti Entertainment Corporation, an Illinois corporation ("*Tenant*"), entered into that certain Lease Agreement for the Premises which was approved by the City Council on May 20, 2019 pursuant to City of Des Plaines Resolution R-107-19. ("*Lease Agreement*"); and

WHEREAS, under the Lease Agreement, the Tenant is responsible for paying all property taxes that may be assessed against the Premises as a result of the Tenant's operations on the Property; and

WHEREAS, Section 6.C of the Lease Agreement prohibits the Tenant from protesting or appealing any property taxes assessed against the Premises or the Tenant's leasehold interest without the City's consent; and

WHEREAS, the Cook County Assessor has assessed the Tenant's leasehold interest resulting in an ad valorem property tax liability on the part of the Tenant; and

WHEREAS, the Tenant has requested that the City provide its consent and authorization to allow the Tenant to file an appeal of the Tenant's tax liability; and

WHEREAS, the City Council has determined that is in the best interest of the City and is residents provide the consent and authorization requested by the Tenant;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

<u>SECTION 1</u>: <u>**RECITALS**</u>. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: CONSENT AND AUTHORIZATION TO FILE APPEAL. The City Council hereby consents to and authorizes the filing of an appeal of the property tax liability of the Tenant arising from its leasehold interest in the Premises. The City Council further authorizes

the City Manager to execute any written consents or authorizations required to allow the Tenant to proceed with the aforementioned appeal.

SECTION 3: EFFECTIVE DATE. This resolution shall be in full force and effect after its passage in the manner provided by law.

PASSED this _____ day of ______, 2024.

APPROVED this _____ day of ______, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

The Premises is legally described as follows:

PARCEL 1:

LOT 68 AND 69 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN ORIGINAL TOWN OF RAND (NOW VILLAGE OF DES PLAINES) A SUBDIVISION OF PART OF SECTIONS 16, 17, 20 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-010-0000

Commonly known as 1470-1476 Miner St., Des Plaines, Illinois

PARCEL 2:

THE SOUTHEAST 30.0 FEET OF LOT 67 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN TOWN OF RAND, BEING A SUBDIVISION OF PARTS OF SECTIONS 16, 17, 20 AND SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-024-0000

Commonly known as 1486 and 1486 1/2 Miner St., Des Plaines, Illinois

EXHIBIT B

LEASE AGREEMENT

LEASE AGREEMENT

(1476 Miner Street, 1486 and 1486 ½ Miner Street, Des Plaines – Des Plaines Theatre)

THIS LEASE AGREEMENT (the "Lease") is dated as of the 20th day of May, 2019 and is by and between the CITY OF DES PLAINES, an Illinois home rule municipal corporation ("Landlord" or "City") and the ONESTI ENTERTAINMENT CORPORATION, an Illinois corporation ("Tenant").

SECTION 1. RECITALS'.

A. Landlord is the owner of a theatre with a concession area, a restaurant area and other improvements located at 1476 Miner Street Des Plaines Illinois 60016, and two storefronts commonly known as 1486 and 1486 ½ Miner Street, Des Plaines, Illinois 60016, and collectively defined in Section 2 of this Lease as the "*Premises*".

B. Tenant has agreed to lease the Premises and operate it in accordance with the Operational Conditions which are attached to this Lease as *Exhibit B*.

C. The parties now desire to formalize the lease arrangement and evidence the same in a written document.

SECTION 2. BASIC LEASE TERMS AND DEFINITIONS.

Whenever used in this Lease, the following terms shall have the following meanings unless a different meaning is required by the context:

"Accessory Spaces": Those storefront spaces located at 1486 and 1486 ½ Miner Street that are included in the Premises.

"<u>Buildings</u>": Collectively, the structures located on the Premises as of the Lease Execution Date including the theatre building at 1476 Miner Street and two street facing tenant spaces at 1486 and 1486 ½ Miner Street.

"Commencement Date": The Commencement Date shall be the Lease Execution Date.

"Environmental Law":

- a. Any applicable federal, state or local statute, law, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction, directive, requirement by, of, or agreement with any Governmental Agency, existing as of the Lease Execution Date and as amended thereafter, relating to:
 - i. the protection, preservation or restoration of the environment (including, without limitation, air, water, vapor, surface water, ground water, drinking water supply, surface land, subsurface land, plant and animal life, or any other natural resource), or to human health and safety; or



^{*} All capitalized words and phrases throughout this Lease shall have the meanings set forth in the preamble above, in Section 2 of this Lease, or as defined within this Lease.

- ii. the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances.
- b. Environmental Law also includes, without limitation, any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass, and strict liability) that may impose liability or obligations for injuries or damages related or incidental to, or threatened as a result of, the presence of or exposure to any Hazardous Substance and the following statutes and implementing regulations:
 - i. the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.);
 - ii. the Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.);
 - iii. the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*);
 - iv. the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 *et seq.*);
 - v. the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 *et seq.*); and
 - vi. the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*).

"*Fixtures*": The Fixtures shall include, without limitation, the Restaurant bar, banquets and all built-in furniture, cabinets, displays, floor coverings, paneling, railing, all electrical, plumbing, heating and sprinkling equipment, fixtures, outlets, window treatments, partitions, railways, gates, doors, vaults, paneling, molding, shelving, radiator enclosures, cork, rubber, linoleum and composition floors, ventilating, silencing, air conditioning and cooling equipment, fire suppression and/or life safety systems, refrigeration systems, stoves, ovens, grills, dishwashers, refrigerators and all other appliances and/or appurtenances of a similar nature or purpose whether or not attached to or built into the Premises and installed by Tenant or at Tenant's direction.

<u>"Governmental Agency"</u>: Any federal, state or local government, subdivision, district, agency, department, court, tribunal, officer, board, commission, or other instrumentality including the Landlord acting in its governmental capacity.

"<u>Hazardous Substance</u>": Any substance, whether liquid, solid or gas, that is listed, defined, designated or classified as toxic, hazardous, radioactive or dangerous under any Environmental Law, whether by type or by quantity. Hazardous Substance includes, without limitation, any explosive or radioactive material, asbestos, asbestos containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, special waste or petroleum products or any derivative or by-product thereof, methane, toxic waste, pollutant, contaminant, hazardous waste, toxic or hazardous substances or related materials, as defined in any applicable Environmental Law.

<u>"Initial Term"</u>: The term of this Lease shall be five years, beginning on the Operational Date as defined below.

"Intended Uses": The uses as set forth in Exhibit A.

"Landlord's Work": All construction and decoration of the Theatre proper required to be conducted by Landlord; excludes Operator Build-Out Improvements.

"Lease Execution Date": The date on which both parties caused this Lease to be fully executed, which shall be deemed to be the date referenced in the first paragraph of page 1 of this Lease.

"<u>Lease Year</u>": The first Lease Year shall be for a period of 12 consecutive calendar months beginning on the Operational Date, except if the Operational Date shall be any day other than the first day of a calendar month, the first Lease Year shall be the period beginning on the Operational Date and ending on the last day of the calendar month in which it shall occur, plus the following 12 calendar months. Each subsequent Lease Year shall be a successive period of 12 calendar months.

<u>"Operational Conditions</u>": Those certain conditions, requirements, and obligations governing Tenant's operation of the Premises for the Intended Use as set forth in **Exhibit B**.

<u>"Operational Date"</u>: That date upon when the renovation and rehabilitation of the Theatre is completed and a temporary certificate of occupancy or complete certificate of occupancy has been issued by the City for the Premises excluding the Restaurant Space and the Accessory Spaces, which shall be provided to Tenant in the condition described in Section 10.

<u>"Operator Build-Out Improvements</u>": Those certain improvements to the Buildings to be constructed or installed by Tenant in the manner contemplated in **Exhibit E** of this Lease.

"<u>Premises</u>": Those certain parcels of real property commonly known as the "**Des Plaines Theatre**" and located at 1476 Miner Street, and the "**Accessory Spaces**" and located at 1486 and 1486 1/2 Miner Street, Des Plaines, Illinois 60016 collectively also referred to herein as the "**Theatre**" and legally described in **Exhibit C**, including the Buildings, and certain rights of ingress and egress thereto.

"<u>Property Taxes</u>": Ad valorem real property taxes and assessments (whether general or special) that are lawfully levied or assessed by any Governmental Agency and that become a lien on, or are levied against, the tax parcel of which the Premises is a part during the Term of the Lease. Property Taxes are levied a year behind in Cook County Illinois and therefore Tenant will be responsible for Taxes that come due after the termination of the Lease.

<u>"Renewal Term":</u> A single extension period of five years that may be entered into upon agreement of the parties and in Landlord's sole discretion.

<u>"Rent":</u> The amounts set forth in **Exhibit D** to be paid on a monthly basis by Tenant to Landlord for use of the Premises as well as all other amounts owed by Tenant under this Lease.

"<u>Rent Commencement Date</u>": The Rent Commencement Date shall be the first day after the substantial completion and approval by Landlord/City of the Operator Build-Out Improvements described in **Exhibit E**, as evidenced by the issuance of a certificate of

EXHIBIT B

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occupancy by the appropriate Governmental Agency, but in no event later than six months after the Operational Date.

"Restaurant": As defined in Section 10 of this Lease.

"*Restaurant Space*": That approximately 3,000 square foot portion of the Theatre building located on the second floor to be improved pursuant to *Exhibit E*.

"<u>Restaurant Improvements</u>": A subset of the Operator Build-Out Improvements defined in **Exhibit E**.

"<u>Term</u>": The Initial Term and the Renewal Term if exercised pursuant to the provisions of this Lease, as the context shall require.

"<u>Utility Services</u>": All water, gas, electric, heat, light, power, sewer, refuse and telecommunications and other utilities and services supplied to the Premises.

SECTION 3. DEMISE.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises to be operated for the Intended Use and in accordance with the Operational Conditions.

SECTION 4. TERM AND TERMINATION.

A. <u>Initial Term.</u> Tenant shall have and hold the Premises, and such related uses of the Premises as may be described in this Lease, for the Initial Term, unless sooner terminated as hereinafter provided.

B. <u>**Renewal Term.**</u> The parties may extend the Initial Term for a period of five years, at the sole and absolute discretion of Landlord, and upon the terms, covenants, and conditions agreed to by the parties as confirmed by the written agreement of the parties ("*Renewal Term*").

C. <u>Termination</u>. Notwithstanding anything in this Lease to the contrary, if Ron Onesti, designated as Key Personnel in the Operational Conditions, is no longer the owner or an employee of Tenant, or is unable to perform his duties in accordance with the Operational Conditions for any reason, including death or disability, then Landlord, in its sole discretion may terminate this Lease upon written notice to Tenant, effective within 45 days after such notice.

SECTION 5. SECURITY DEPOSIT AND RENT.

A. No security deposit shall be required of Tenant at the commencement of this Lease. Landlord reserves the right, in its sole discretion, to require a security deposit from Tenant at any time during the Term.

B. Commencing on the first day of the Rent Commencement Date, and on the first day of every month thereafter, Tenant shall pay to Landlord, in advance, the Rent.

C. Tenant shall pay the Rent to Landlord at the following address:

Des Plaines City Hall 1420 Miner St. Des Plaines, Illinois 60016, Attn: Director of Finance. **D.** Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of the total amount due for any amount of the Rent not paid within 10 days after the date on which such Rent is due.

E. All amounts owing by Tenant to Landlord (other than Rent) shall be deemed additional rent. For purposes of this Lease, the term "Rent" shall mean collectively, the sum of the Rent and any additional rent. In the event of any default in the payment of any additional rent, Landlord shall have the same rights and remedies as are available with respect to a default in the payment of Rent.

SECTION 6. TAXES.

A. The Premises, as of the Commencement Date, are either exempt from Property Taxes or the Premises have been assessed based on its status as a vacant real estate. However, when the Premises, or any portion of or interest in, is determined to be subject to Property Taxes by a Governmental Agency with appropriate jurisdiction, then Tenant shall be solely responsible for, and shall timely pay to Landlord pursuant to Paragraph 6.b of this Lease, any and all Property Taxes levied and assessed, if any, against the Premises, as additional Rent beginning on the Rent Commencement Date to and including the last day of the Term. Tenant shall not be required to pay any Property Taxes assessed for the time period before the Rent Commencement Date. The parties recognize that Illinois is a year behind in the levying of Property Taxes and agree that Tenant will pay the Property Taxes assessed for Term of the Lease, even though this may mean a payment of Property Taxes will be due from Tenant to Landlord after the Lease Term has ended and the Lease has been terminated.

B. Beginning on the Rent Commencement Date. Tenant will pay to Landlord, on a monthly basis, a 1/12 share of an amount equal to the real property taxes assessed against the Premises in its first full year of operation and each subsequent year thereafter ("Monthly Estimated Property Taxes"). The parties acknowledge and agree that as there is no "base year" due to the fact that the Premises are currently exempt or not taxed on the basis of an occupied theatre, the Monthly Estimated Property Taxes for the Theatre's first year of operation shall be \$10,083 per month. In the event that the sum of the Monthly Estimated Property Taxes paid by Tenant are not sufficient to pay the taxes actually levied for a tax year, Landlord shall invoice Tenant for the difference, which amount shall be paid to Landlord with the Monthly Estimated Property Taxes on a pro-rated basis over the following twelve months unless the Lease is terminated, then Tenant shall pay the amount requested within thirty days of the invoice from Landlord. Likewise, if the sum of the Monthly Estimated Property Taxes paid by Tenant exceed the amount actually levied, then Tenant shall be entitled to a refund payable either in (i) a lump sum with Landlord paying the latest tax installment; or (ii) in a monthly pro-rated reduction in the Monthly Estimated Property Taxes for the following twelve months, unless it is at the end of the Term, then Landlord will retain with the balance of the Estimated Monthly Property Taxes held by Landlord until the second installment of the tax bill for the last year of the Term is issued and Landlord will pay the tax bill.

C. Tenant may not protest the assessment of the Premises or amount of the Property Taxes, or undertake any action to divide or consolidate the Premises, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

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SECTION 7. USE, ZONING, AND PARKING.

A. Prior to commencing the Intended Uses, Tenant shall obtain any and all approvals that may be required by any and all Governmental Agencies (including the Landlord/City conditional use permit) and any other applicable entities in connection with the use of the Premises.

B. Tenant shall have the right to use the Premises solely for the Intended Uses and no other use. Tenant shall not use the Premises in any manner that violates the Operational Conditions or the laws or ordinances of Landlord or of any other Governmental Agency with jurisdiction.

C. Tenant shall be entitled to conduct valet parking for events held at the Premises, subject to the terms of a license agreement with Landlord for use of a municipal parking lot structure ("*Parking License Agreement*") to be negotiated in good faith between the parties at a later date.

SECTION 8. TITLE, QUIET ENJOYMENT, AND ACCESS.

A. Landlord warrants that it has title to the Premises in fee simple.

B. Subject to the other terms and provisions of this Section 8 and Section 22 of this Lease, Landlord covenants and agrees that upon (i) payment by Tenant of Rent as set forth in Section 5 of this Lease and (ii) performance by Tenant of all terms, covenants and conditions of this Lease applicable to Tenant or all terms, covenants and conditions of the Operational Conditions, Tenant shall peaceably and quietly hold and enjoy the Premises and the rights and privileges granted for the Term demised without hindrance or interference by Landlord, and Landlord shall perform all of its obligations under this Lease.

C. Notwithstanding Tenant's exclusive use and control of the Premises, Landlord and its agents, employees, and independent contractors shall have the right to enter in and upon the Premises at any time during the Term for the purpose of examining and inspecting the Premises, provided, however, that in entering in or upon the Premises such persons shall not unreasonably interfere with Tenant's use and occupancy of the Premises.

SECTION 9. UTILITIES.

From the Rent Commencement Date and continuing throughout the Term, Tenant shall be responsible for (i) obtaining all Utility Services supplied to the Premises, and (ii) the prompt payment of all charges for Utility Services supplied to the Premises.

SECTION 10. OPERATOR BUILD-OUT IMPROVEMENTS.

A. <u>Restaurant Space</u>: Landlord will deliver to Tenant the Restaurant Space in a "vanilla box" condition, suitable for buildout as a first-class, full-service sit-down restaurant and bar with all utilities operational ("*Restaurant*"). Landlord will install in the Restaurant, at its cost and prior to delivery to Tenant, a kitchen hood and duct ventilation system complete with a fire suppression system. Tenant shall, at its own expense, make the alterations, improvements, and additions in and to the Restaurant Space necessary to convert it into a full-service sit-down restaurant and bar in compliance with the terms of *Exhibit E* "Operator Build-Out Improvements,"

B. <u>Accessory Spaces:</u> Landlord will deliver to Tenant the Accessory Spaces in a "vanilla box" condition, suitable for buildout as offices, dressing rooms, or ticket windows, as may

be required for the operation of the Theatre in Tenant's discretion ("*Accessory Uses*"). Tenant shall, at its own expense, make the alterations, improvements, and additions in and to the Accessory Uses necessary for the Accessory Uses in compliance with the terms of *Exhibit E* "Operator Build-Out Improvements,"

C. All proposed alterations, improvements, or additions made by Tenant shall be consistent with the historic nature of the Premises and approved by Landlord.

D. Upon termination of this Lease, it shall be the responsibility of Tenant to return the Restaurant Space and Accessory Spaces to substantially the conditions they were delivered by the City.

SECTION 11. CONDITION AND MAINTENANCE.

A. <u>Condition of Premises.</u> Tenant agrees to accept the Premises in the condition it is in at the Operational Date.

B. <u>Maintenance Standards.</u> Tenant shall, at its sole cost and expense, maintain the Premises and all of its improvements, equipment, and other personal property located upon or within the Buildings in first-class condition and repair, including but not limited to the Theatre entrance (doors), with the exception of those portions of the Premises that are listed in Section 11.D of this Lease and designated as the responsibility of Landlord. Such maintenance shall include any and all regular and customary maintenance as is reasonably required.

С. Tenant's Maintenance Responsibilities. Tenant shall, at its sole cost and expense, (i) provide adequate janitorial service for the Buildings, which shall include keeping the interior and exterior of the Buildings in a clean and orderly condition, free of accumulations of dirt, rubbish, unlawful obstructions, and any dangerous, noxious, hazardous, or offensive conditions, (ii) maintain all landscaping on the Premises in first-class condition, (iii) pay Landlord for snow removal for the public and private sidewalks and roads on and adjacent to the Premises in the manner provided below in Section 11.D, (iv) pay all day-to-day maintenance expenses incurred as a result of Tenant's occupation and operation of the Premises including interior maintenance (including, without limitation, interior painting, plumbing, and repair of theatre seating) as well as any damages caused by Tenant, its employees, or any person attending an event on the Premises scheduled and hosted by Tenant; (v) independently contract for the extermination of the Premises (on a monthly basis, or more frequently, if needed), to prevent insect and rodent infestation, (vi) clean out grease traps on a monthly basis on a monthly basis, or more frequently, if needed; and (vii) maintain, repair, and replace components of the Lighting and Sound Equipment (defined in Subsection 11.D.13 below) required as a result of ordinary wear and tear or damage done to such equipment by employees, customers, clients, guests, or invitees of Tenant.

D. <u>Landlord's Maintenance Responsibilities.</u> Landlord shall, at its sole cost and expense, be responsible for the maintenance and repair of the following portions of the Premises and the Buildings to the extent provided for in this Section 11.D; provided, however that Tenant shall remain responsible and liable for any repairs or maintenance required as a direct result of the negligence of Tenant, or its contractors, employees, agents, invitees, licensees, or permittees, and Landlord shall have no responsibility for or financial obligation arising from such repairs or maintenance.

1. <u>Structural Elements:</u> Landlord shall, at its sole cost and expense, keep in good order, condition, and repair (including replacement, when necessary)

the structural components of the Buildings, including, without limitation, the roof, exterior walls, and load bearing elements;

- 2. <u>HVAC:</u> Landlord will perform bi-monthly maintenance and inspections on all heating, ventilation, and air conditioning systems and pay for repairs;
- 3. <u>Elevator</u>: Landlord will perform monthly maintenance and inspections on the elevator and pay for repairs;
- Fire Alarm: Landlord will perform maintenance and annual inspections on the fire alarm and pay for repairs;
- 5. <u>Fire Suppression System</u>: Landlord will perform monthly maintenance and annual inspections on the fire suppression system and pay for repairs;
- 6. <u>Backflow/RPZ Devices:</u> Landlord will perform annual maintenance and inspections on the backflow devices and pay for repairs;
- <u>Building Exterior</u>: Landlord will perform regular maintenance and inspections on the building exterior and pay for repairs with the exception of damage by Tenant or its employees, customers, clients, guests, or invitees (e.g. broken windows or doors);
- 8. <u>LED Marquee:</u> Landlord will perform regular maintenance and inspections as it pertains to the lighting and display components of the LED marquee. Costs for repair/replacement of the LED marquee, after initial installation, and associated software shall be shared equally between the parties;
- <u>Sanitary Sewer:</u> Landlord will responsible for the maintenance and repair of the sanitary sewer from the exterior building line to the main-line sewer. Maintenance of all internal sewage waste pipes including grease traps are the responsibility of Tenant;
- 10. <u>Domestic Water Supply</u>: Landlord will be responsible for the domestic water supply from the meter to Landlord-owned water main. Maintenance of all other internal domestic water supply pipes and appurtenances are the responsibly of Tenant;
- 11. <u>Electric Service</u>: Landlord will be responsible for the electric service from the point of delivery from ComEd to the main electric distribution panels. Tenant is responsible for all electric wiring and system beyond the main panels including sub-panels;
- 12. <u>Snow and Ice Removal.</u> Landlord will perform snow and ice removal from the public walkways adjacent to the Premises on Miner Street, Lee Street, and the rear walkway on the east side of the Premises at no charge through and until December 31, 2020. After December 31, 2020, City reserves the right to establish a special service area (SSA) or other legal legally permitted assessment to fund or reimburse the cost of snow and ice removal from the sidewalks within the City's Central Business District. Tenant agrees it will not challenge, impede, or otherwise object to the creation of such special service area or the levying of such assessment

and shall pay its proportional share of costs arising from the City's snow and ice removal activities as may be required under law; and

13. <u>Theatre Lighting and Sound Equipment.</u> Prior to Tenant's occupancy, Landlord will procure and install basic lighting and sound systems suitable for live performance of music and theatre including equipment of comparable makes, models, and features to those described in *Exhibit F* attached hereto ("*Lighting and Sound Equipment*"). Any specialty equipment needed for specific events will be procured, installed, and maintained by Tenant. The Lighting and Sound Equipment shall remain the property of Landlord notwithstanding any maintenance, repair, or replacement conducted by Tenant.

SECTION 12. INDEMNIFICATION.

Tenant shall indemnify and save Landlord, Landlord, its elected and appointed officials, officers, agents, attorneys, employees, contractors, successors, and assigns, harmless from and against any and all losses, expenses, claims, costs, causes, actions, litigation costs, attorney's fees, suits, and damages, relating to personal or bodily injuries, death, or damages or injuries to property arising from, occurring, growing out of, incident to, or resulting directly or indirectly from the use of, or contact with, the Premises by Tenant or its contractors, employees, engineers, agents, invitees, licensees, or permittees, arising from Tenant's occupation of the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any act or negligence of Tenant, its agents, servants, employees or invitees, in or about the Premises. In case of any action or proceeding brought against Landlord, its agents or employees, successors or assigns, by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord. Notwithstanding anything to the contrary herein, Tenant shall not indemnify Landlord or its agents and employees (or its successors and assignees) with respect to any claim, demand, cost or expense caused by or, arising out of Landlord's or its agents' and employees' gross negligence or willful misconduct. Notwithstanding the foregoing, Landlord, as an Illinois municipal corporation does not waive any of its rights under the Illinois Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seg.) and can only be held accountable for its willful and wanton misconduct. Tenant's obligations under this Section shall be in addition to, and shall not be limited or waived by any insurance, including any insurance provided by Tenant pursuant to this Lease, or any insurance provided by Landlord.

SECTION 13. INSURANCE.

A. <u>Insurance Required.</u> Landlord has caused the Premises to be self-insured or insured by responsible insurance compan(ies) in an amount sufficient to cover the replacement costs thereof in case of loss by fire or other casualty or disaster. In the event of such loss, Landlord, in its sole discretion, may terminate the Lease upon written notice to Tenant and not restore or repair of the Premises. Tenant hereby waives any rights in said policies maintained by Landlord and agrees that Tenant shall not be entitled to be named an insured thereunder.

B. <u>Required Coverages.</u> Tenant shall maintain, at its sole cost and expense, throughout the Term, the following policies of insurance:

1. <u>General Liability Insurance.</u> Insuring Tenant against liability for personal injury, death or damage to property arising out of the use of the Premises

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by Tenant. Such insurance shall provide coverage with policy limits of not less than \$1 million in the event of bodily injury or death to one or more persons and in an amount of not less than \$1 million for property damage, and umbrella liability insurance providing excess coverage with policy limits of not less than \$5 million, and including a contractual liability endorsement covering Tenant's indemnification obligations pursuant to this Lease;

- 2. <u>Workers' Compensation and Employer's Liability Insurance.</u> With such limits as are required by law, and employees' liability insurance, with limits not less than \$500,000 per person-injury and \$1 million per occurrence. Worker's compensation, disability and such other similar insurance with statutory limits covering all persons that are performing alterations, installation, additions or working in the Premises, and with respect to whom death or bodily injury claims could be asserted against Landlord;
- 3. <u>Dram Shop Insurance.</u> In the event any alcoholic beverages, including, but not limited to beer and wine, shall be sold in or upon the Premises, Tenant shall carry insurance against any and all liability, claims, damages and liabilities, related to, resulting from or caused in whole or in part by the selling of such alcoholic beverages required under Section 6-21 of the Illinois Liquor Control Law (235 ILCS 5/6-21, the "*Dram Shop Act*") and under any future law, statute, rule or ordinance pertaining to the storage, sale, use or gift of alcoholic beverages on or from the Premises, with limits no less than \$1,000,000.00 per occurrence;
- 4. <u>Automobile Insurance</u>. Automobile liability for all owned or hired automobiles operated in conjunction with the Theatre;
- 5. <u>Coverage for Operator Build-Out Improvements and Personal Property.</u> All-risk coverage, vandalism, malicious mischief, water damage and special extended coverage for the full cost of replacement of all Operator Build-Out Improvements and all items that are not the expressed responsibility of Landlord to insure under this Lease; and
- 6. <u>Umbrella Coverage.</u> The required coverages set forth below 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. The limit of any umbrella policy shall be an additional \$5,000,000.

All of said insurance shall be with commercially reasonable deductibles and shall provide that it shall not be subject to cancellation, termination or change (except for changes that increase coverage), except upon at least thirty (30) days' prior written notice to Landlord and any other additional insureds. All liability insurance coverage shall cover Landlord, its principals, its boards, committees, commissions, elected and appointed officials, officers, agents, employees, engineers, representatives and attorneys. All insurance policies shall be written by good and solvent insurance companies authorized to do business in the State of Illinois, and having a rating in A.M. Best's Guide of A-VIII or higher (or a comparable or higher rating issued by another nationally recognized rating organization).

EXHIBIT B



C. <u>Waiver of Subrogation</u>. Notwithstanding any other provision to this Lease to the contrary, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance and also provided that such a policy can be obtained without additional premiums.

D. <u>Notification of Cancellation or Modification.</u> With respect to all insurance policies required to be maintained by Tenant pursuant to this Lease, the policy shall contain the following endorsement:

"The insurer shall give the City of Des Plaines no less than thirty days prior written notice of any intention not to renew such policy or to cancel, replace, or materially alter the same, such notice to be given by certified mail, return receipt requested, addressed to: City Manager, City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016."

Tenant shall send a certificate of insurance for each such policy to Landlord prior to the Operational Date, annually thereafter upon renewal, or any time a new policy is issued.

Each policy (with the exception of workers compensation and employer's liability) (i) shall name Landlord as an additional insured; (ii) shall include a waiver of subrogation in favor of Landlord; and (iii) shall contain a primary/noncontributory endorsement in favor of Landlord. Umbrella coverages shall follow form.

SECTION 14. DAMAGE AND DESTRUCTION.

A. Except as otherwise provided in Section 13.A of this Lease, if the Premises shall be damaged or destroyed by fire or other casualty, either in whole or in part, Landlord shall restore the Premises to its condition prior to such damage or destruction with such insurance proceeds as may be available. If insurance proceeds are not available, and Landlord, in its sole discretion, elects not to restore the Premises, Landlord shall have the right to terminate this Lease by giving Tenant written notice, effective within 30 days after such notice.

B. Except as otherwise provided in Section 13.A of this Lease, if the Premises shall be damaged or destroyed to the extent that the Premises are rendered untenantable, Landlord and Tenant shall each have the right to terminate this Lease by giving notice to such effect to the other party at any time following the expiration of 120 days after such damage or destruction occurred unless at the time of the giving of such notice a contract for such work of restoration shall have been awarded by Landlord.

C. Anything herein to the contrary notwithstanding, if, during the last six months of the Initial or of any Renewal Term, the Premises should be damaged or destroyed by fire or other cause to such an extent that the cost of restoration would exceed 50% of the amount it would have cost to replace the Premises in its entirety at the time such damage or destruction took place, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party notice to such effect within 30 days after such damage or destruction shall have taken place, and if such notice is given, the term of this Lease shall terminate as of the earlier of the date Tenant vacates the Premises or 60 days after the giving of such notice.

D. During the course of restoration of the Premises there shall be no abatement of Rent unless the Premises shall have been rendered untenantable by reason of such damage or partial destruction, in which case the Rent, which is fairly allocable to the space which is being restored, shall abate until such restoration work shall have been completed.

SECTION 15. EMINENT DOMAIN.

In the event that all or substantially all of the Premises shall be taken by any Governmental Agency (other than Landlord) or utility that has the power of eminent domain, then Tenant shall have the right to terminate this Lease within 60 days thereafter. Each party shall have the right to maintain its own respective action against such Governmental Agency or utility for its respective damages and neither party shall have any interest in any award granted to the other. Notwithstanding the foregoing, in the event Landlord exercises its eminent domain authority with respect to the Premises, either Landlord or Tenant shall have the right to terminate this Lease.

SECTION 16. ENVIRONMENTAL COMPLIANCE.

A. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws pertaining to Tenant's operations on the Premises and shall not cause or permit any Hazardous Substance to be brought, kept, stored, or used in or about the Premises.

B. If Tenant causes or permits any Hazardous Substance to be brought, kept, stored, or used in or about the Premises and such violation results in the contamination of the Premises, Tenant shall indemnify, save harmless and defend Landlord, and its boards, committees, commissions, elected and appointed officials, officers, agents, and employees, against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Tenant's acts or omissions in connection with such Hazardous Substance whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Tenant, except to the extent caused by the sole negligence of Landlord.

C. Tenant represents, covenants and warrants that Tenant's operations in, on, or under the Premises shall be in compliance with all applicable Environmental Laws.

SECTION 17. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign or sublet this Lease, in whole or in part, without the express, prior written consent of Landlord, which Landlord may, in its sole and absolute discretion, withhold. Any assignment or sublease without such written consent shall, at Landlord's option, be deemed to be void and of no force or effect. In the event of any sublease or assignment, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants or conditions of this Lease.

SECTION 18. DEFAULT.

- A. Tenant shall be in default of this Lease if Tenant:
 - 1. fails to pay, when due, any Rent or any other sums due and payable hereunder (including, without limitation Property Taxes and Utility Service charges) within 15 days after notice by Landlord to Tenant specifying the amount and details of unpaid Rent or other sums due hereunder; or



- 2. breaches any other covenant or condition of this Lease and does not cure such other default within 30 days after notice from Landlord specifying the default complained of (provided that if such default is not reasonably susceptible of cure within said 30 day period and if Tenant is diligently and continuously pursuing such cure to completion then such cure period may be extended by up to 60 additional days);
- 3. abandons the Premises for a period of 45 or more consecutive days;
- is adjudicated as bankrupt or makes an assignment for the benefit of creditors;
- 5. becomes legally insolvent; or
- 6. is in violation of any term or provision of the Operational Conditions and fails to cure such violation in accordance with the timeline set forth in Section 18.D below.

B. In the event of a default as described above, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have in law or equity with only such further demand or notice as may be required by applicable law, to re-enter the Premises and eject all persons therefrom, and either:

- 1. declare this Lease at an end, in which event Tenant shall immediately remove its facilities, equipment and property and pay Landlord a sum of money equal to the total of: (i) the amount of the unpaid Rent accrued through the date of termination; (ii) the amount by which the unpaid Rent reserved for the balance of the Term exceeds the amount of such loss of Rent that Tenant proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other amount necessary to compensate Landlord for all detriment directly and proximately caused by Tenant's failure to perform its obligation under the Lease; or
- 2. without terminating this Lease, relet the Premises, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due Landlord hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly upon demand.

C. No re-entry and taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any releting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

D. Landlord shall be in default of this Lease if Landlord shall breach any of its covenants contained in this Lease and does not cure such default within 30 days after notice from Tenant specifying the default complained of (provided that if such default is not reasonably

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susceptible of cure within said 30 day period and if Landlord is diligently and continuously pursuing such cure to completion, then such cure period may be extended by up to 90 additional days).

E. In any action or proceeding hereunder, the prevailing party shall be entitled to recover from the other the prevailing party's reasonable costs and expenses in such action or proceeding, including, without limitation, reasonable attorneys' fees. In the event either party is sued by a third party as a result of a violation of a covenant or warranty herein contained by the other party hereto, then the party who has violated the covenant or warranty shall be responsible for the reasonable costs and expenses in such action or proceeding against the non-violating party, including, without limitation, reasonable attorneys' fees.

SECTION 19. FORCE MAJEURE.

Except as otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive laws or regulations of Governmental Agencies, riots, insurrection, war, or other reasons of a like nature not the fault of the party delayed in doing acts required under the terms, covenants and conditions of this Lease (all of such reasons or causes referred to in this Lease as "*Force Majeure*"), then performance of such acts shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay.

SECTION 20. ESTOPPEL CERTIFICATE.

Upon notice from either Landlord or Tenant to the other party, such other party shall, within 20 days of receipt of such notice, execute and deliver to the requesting party, without charge, a written statement ratifying this Lease and certifying that (i) this Lease is in full force and effect, if such is the case, and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated, (ii) all terms, covenants and conditions under this Lease to be satisfied and performed have been satisfied and performed, except as shall be stated; (iii) the other party is not in default under this Lease; except as shall be stated; and (iv) the amount of advance rental, if any, paid by Tenant and the date to which rental has been paid.

SECTION 21. SUBORDINATION.

A. Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any first mortgage or deed or trust or bond now or hereafter placed upon Landlord's interest in the Premises; provided, however, that Tenant's (i) possession of the Premises shall not be disturbed so long as Tenant continues to perform its duties and obligations under this Lease; and (ii) duties and obligations under this Lease shall not be expanded nor its rights diminished by the operation of this Section.

B. Tenant shall attorn to the mortgagee, trustee, beneficiary or bond holder under any such mortgage, deed of trust or bond, and to the purchaser in a sale pursuant to the foreclosure thereof; provided, however, that Tenant's possession of the Premises shall not be disturbed so long as Tenant shall continue to perform its obligations under the Lease.

SECTION 22. SURRENDER OF PREMISES.

A. <u>Surrender.</u> On the earlier of (i) the date the Initial Term, or if renewed, the Renewal Term, expires or (ii) the date the Lease is terminated in accordance with any applicable



provision of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as when Tenant accepted the Premises pursuant to Section 11.A of this Lease, excepting, however, ordinary wear and tear, and alterations, improvements, and additions made by Tenant pursuant to Section 10 of this Lease.

B. <u>Holding Over.</u> If Tenant retains possession of the Premises or any part thereof after the termination of the Term or any extension thereof, by lapse of time or otherwise, Tenant shall pay Landlord the monthly Base Rent, at 150% of the rate payable for the month immediately preceding said holding over for each month or part thereof that Tenant thus remains in possession as liquidated damages. The provisions of this Section do not exclude Landlord's rights of re-entry subject to applicable law or any other right hereunder.

SECTION 23. NO BROKER'S COMMISSION.

Landlord and Tenant each warrant to the other that they have used no brokerage entity in connection with this Lease and that no brokerage fees or commissions are owed in connection therewith. Each party shall, and does hereby, indemnify, save harmless, and agree to defend the other from any liability for any such fees and commissions.

SECTION 24. GENERAL.

A. <u>Notices.</u> Any notice or communication required or permitted to be given under this Lease shall be in writing and shall be delivered (1), personally, (2) by a reputable overnight courier, (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, and(4) by facsimile. 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 (1), (2) or (3) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Lease, notices shall be deemed received upon actual receipt. By notice complying with the requirements of this Section, 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 Landlord shall be addressed to, and delivered at, the following address:

City Manager 1420 Miner Street Des Plaines, Illinois 60016 Facsimile: 847-391-5451

With a copy to:

Holland & Knight LLP 150 North Riverside Plaza Chicago, Illinois 60606 Attention: Peter Friedman Facsimile: 312-578-6666

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

Onesti Entertainment Corporation

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2720 S. River Rd Suite 254 Des Plaines IL 60018 Attention: Ron Onesti

With copy to:

B. <u>**Time of the Essence.**</u> Time is of the essence in the performance of all terms, covenants, and conditions of this Lease.

C. <u>Rights Cumulative</u>. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. <u>Non-Waiver</u>. The failure of Landlord or Tenant to enforce against the other any term, covenant, or condition of this Lease shall not be deemed a waiver thereof, nor void or affect the right of the aggrieved party to enforce the same term, covenant, or condition on the occasion of any subsequent breach or default; nor shall the failure of either party to exercise any option in this Lease upon any occasion arising therefore be deemed or construed to be a waiver of the right to exercise that same kind of option upon any subsequent occasion.

E. <u>Consents.</u> Whenever the consent or approval of either party is required in this Lease, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, both parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

F. <u>Governing Law.</u> This Lease shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Illinois.

G. <u>Severability.</u> It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Lease or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Lease and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Lease to the greatest extent permitted by applicable law.

H. <u>Entire Agreement.</u> This Lease shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect.

I. <u>Grammatical Usage and Construction</u>. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

J. <u>Interpretation</u>. This Lease shall be construed without regard to the identity of the party who drafted the various provisions hereof. Moreover, each and every provision of this Lease shall be construed as though all parties hereto participated equally in the drafting thereof. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable hereto.

K. <u>Headings.</u> The table of contents, heading, titles and captions in this Lease have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Lease.

L. <u>Exhibits.</u> Exhibits A, B, C, D, E, and F attached to this Lease are, by this reference, incorporated in and made a part of this Lease. In the event of a conflict between an exhibit and the text of this Lease, the text of this Lease shall control.

M. <u>Amendments and Modifications.</u> No amendment or modification to this Lease shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Lease in accordance with all applicable statutory procedures.

N. <u>Changes in Laws.</u> Unless otherwise explicitly provided in this Lease, any reference to any statute, code, ordinance, or law shall be deemed to include any modifications thereof, or amendments thereto as may, from time to time, hereinafter occur.

O. Warranties Regarding Execution.

- 1. In order to induce Tenant to enter into this Lease, Landlord hereby warrants and represents to Tenant as follows:
 - a. Landlord has the authority and legal right to make, deliver and perform this Lease and has taken all necessary actions to authorize the execution, delivery, and performance of this Lease; and
 - b. the execution, delivery and performance of this Lease (i) is not prohibited by any requirement of law under any contractual obligation of Landlord; (ii) will not result in a breach or default under any agreement to which Landlord is a party or to which Landlord is bound; and (iii) will not violate any restrictions, court order, or agreement to which Landlord is subject; and
 - c. The party executing this Lease on behalf of Landlord has full authority to bind Landlord to the obligations set forth herein.
- 2. In order to induce Landlord to enter into this Lease, Tenant hereby warrants and represents to Landlord as follows:
 - a. Tenant has the authority and legal right to make, deliver and perform this Lease and has taken all necessary actions to authorize the execution, delivery, and performance of this Lease; and
 - b. the execution, delivery and performance of this Lease (i) is not prohibited by any requirement of law under any contractual obligation of Tenant; (ii) will not result in a breach or default under any agreement to which Tenant is a party or to which Tenant is bound; and (iii) will not violate any restrictions, court order, or agreement to which Tenant is subject; and
 - c. The party executing this Lease on behalf of Tenant has full authority to bind Tenant to the obligations set forth herein.

P. <u>No Joint Venture.</u> It is hereby understood and agreed that nothing contained in this Lease shall be deemed or construed as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being agreed that no provision herein contained nor any acts of the parties herein shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

Q. <u>Successors and Assigns.</u> The terms, covenants and conditions of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, and authorized successors and assigns.

R. <u>Calendar Days and Time.</u> Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday, or State or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday, or State or Federal holiday.

S. <u>No Third Party Beneficiaries</u>. No claim as a third party beneficiary under this Lease by any person, firm, or corporation shall be made, or be valid, against Landlord or the Developer.

T. <u>Counterpart Execution</u>. This Lease 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.

U. <u>Certain Rights Reserved by Landlord.</u> Landlord reserves and may exercise the following rights without affecting Tenant's obligations hereunder:

- 1. to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy if Tenant vacates and abandons the Premises prior to the expiration of the Term for a period in excess of thirty (30) consecutive days;
- 2. to exhibit the Premises to others during the last ninety (90) days of the term of this Lease;
- 3. to exhibit the Premises to prospective purchasers upon reasonable advance notice, but not less than one (1) day prior notice, at any time during business hours during the Term provided that Landlord will cooperate with Tenant in taking reasonable measurers to preserve the confidentiality of Tenant's trade secrets; and
- 4. to take any and all measures, including inspections, as may be reasonably necessary or desirable for the safety, protection or preservation of the Premises or Landlord's interests.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

ATTEST/WITNESS:

ATTEST/WITNESS:

LANDLORD:

CITY OF DES PLAINES, an Illinois home rule municipal corporation

By:

Michael G. Bartholomew, City Manager

TENANT:

ONESTI ENTERTAINMENT CORPORATION, an Illinois corporation By:

Ron Onesti, President

APPROVED AS TO FORM ONLY Des Plaines General Geunsel

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EXHIBIT A

INTENDED USES

Subject to and in accordance with all legal and insurance requirements, Tenant agrees that it shall use the Premises for the operation of a first-class live entertainment theatre, accessory concession areas (collectively "*Theatre*"), and a first-class restaurant and bar ("*Restaurant*") as well as such other assembly uses as may be appropriate and permitted by the Operational Conditions. The storefronts located at 1486 and 1486 ½ Miner ("*Accessory Spaces*") may be used for ticket windows, green rooms, dressing rooms, and/or other accessory uses necessary for the operation of the Theatre at the discretion of Tenant.

All uses of the Premises by Landlord, its employees, customers, clients, guests, and invitees will be governed by the Operational Conditions set forth in *Exhibit B*.

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EXHIBIT B

OPERATIONAL CONDITIONS

The Tenant ("*Operator*" for purposes of this *Exhibit B*) has, as a condition of the Lease with the Landlord ("*Owner*" for the purposes of this *Exhibit B*), agreed to operate the Premises, including the Theatre and the Restaurant, in full and strict compliance with the following Operational Conditions. A violation of these Operational Conditions shall be, and is hereby declared to be a violation of the Lease. All capitalized terms, if not herein defined, shall have the meanings attributed to them in the Lease.

A. <u>Management Services.</u> Operator is required to perform the Management Services during the Term, as defined in the Lease. The "*Management Services*" to be performed include but shall not be limited to:

- 1. <u>Bookings.</u> Operator will take all commercial reasonable steps to maximize the frequency of live entertainment bookings and door entries to the Theatre. Operator will work to attain cumulative annual door entry numbers equivalent to or greater than the Arcada Theatre in St. Charles by the second anniversary of the Operational Date as defined in the Lease. A representative sample of monthly bookings from the Arcada Theatre is included in the Business Plan (defined below). Owner and Operator shall cooperate and collaborate to establish standards and guidelines for booking to ensure that all events conducted by Operator meet community standards and reflect well upon the character and culture of the City of Des Plaines.
- 2. <u>Liquor</u>. Operator shall apply for an alcoholic beverages license for on-premises consumption subject to compliance with all requirements of the City's licensing requirements including background checks. No such license shall be granted by the City unless and until Operator submits a valid application and pays all required license fees. In no case shall the City issue a license for the Premises that would allow the service of liquor after 2 a.m. any day of the week.
- 3. <u>Licenses, Permits, and Accreditations.</u> Operator shall apply for and use its best efforts to obtain and maintain all licenses, permits, and accreditations required in connection with the management and operation of the Theatre, at Operator's sole cost.
- 4. <u>Pre-Operational Date Cooperation Consulting.</u> Owner and Operator acknowledge and agree that the Owner's decision to enter into this Agreement is based on Ron Onesti's extensive personal knowledge and experience operating entertainment venues. Ron Onesti shall consult and cooperate with the Owner on a cost-free basis during the Owner's construction and renovation of the Premises to ensure that the décor, furnishings, electrical supply/wiring, and audio/visual systems will meet or exceed the industry standards for an entertainment venue.

- 5. Employees and Key Personnel.
 - a. <u>Theatre and Restaurant Staff.</u> Operator shall (i) determine personnel requirements, recruitment schedules, and compensation levels and (ii) establish forms and procedures for employee compensation. Operator shall hire, promote, discharge, and supervise all employees performing services in and about the Theatre. All of the employees of the Theatre shall be employees of Operator and not of Owner. The costs of salaries, benefits and bonuses for staff, management, and all employees at the Theatre shall be paid by Operator. Operator shall pay, at its sole cost and expense without reimbursement, all costs and expenses, including attorneys' fees, for any and all employment-related suits, hearings and actions. Operator shall indemnify, defend and hold Owner hamless against all loss, cost and expense arising out of Operator 's employment activities for the Theatre.
 - b. <u>Key Personnel.</u> Ron Onesti is identified as "Key Personnel" for the purposes of these Operating Conditions and the Lease. Owner reserves the right to designate additional members of the Operator's organization as Key Personnel. Key Personnel shall be primarily responsible for carrying out the Management Services. The Key Personnel shall not be changed without the Owner's prior written approval. Death, disability, separation from or termination by the Operator of any Key Personnel will be grounds for termination of this Agreement by Owner.

Upon written notice from Operator that Mr. Ron Onesti or other Key Personnel are unable to manage the Premises due to reasons of poor health, or for any other reason, Owner shall have the right, but not the obligation, to terminate this Agreement, in which case this Agreement shall terminate 45 days after Operator's receipt of such notice from the Owner.

- 5. <u>Business Plan.</u> The Premises shall be operated by the Operator at all times in conjunction with an agreed upon "*Business Plan*" which shall serve as a supplement to the Lease. The Business Plan will be the Operator's "Proposal to the City of Des Plaines re: Operator of the Des Plaines Theatre" dated August 3, 2018 that is attached hereto and made a part hereof as *Exhibit 1*. Owner may, from time to time, request that Operator update the Business Plan to reflect current state of operations.
- 6. <u>Marketing</u>. Landlord shall own all marks, identifications, Theatre specific advertising and marketing campaigns developed by Operator to advertise and market the Theatre. Operator is prohibited from accepting sponsorships or advertising from any other casino other than Rivers Casino and shall not allow advertising on the LED Marquee of the Theatre for any entity other than the performers at the Theatre nor shall Operator advertise third party sponsors of events on the exterior of the Theatre whether on the LED Marquee, poster boxes etc. Prior to altering any Theatre logo, letterhead, signage, or other related insignia or material to identify Operator as the managing agent for Owner, Operator shall obtain Owner's consent to the design, size, materials, method of installation and location of any such identifying marks.

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- 7. <u>Contracts.</u> The Operator shall negotiate, consummate, enter into, and perform, such agreements as are necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as Operator determines, in the exercise of its commercially reasonable judgment, are needed from time to time for the management and operation of the Theatre.
- 8. Restaurant Space Operations.
 - i. The Operator will take all commercially reasonable steps to develop and operate the Restaurant Space in a manner comparable to the Club Arcada Speakeasy & Restaurant (St. Charles, IL) and the Bourbon 'n Brass (Evanston, IL) restaurant/bar spaces operated by the Operator.
 - ii. The Restaurant may operate seven days a week during hours determined by the Operator.
 - iii. Operator will be required to supply and maintain commercial kitchen hood cleaning for the Restaurant Space as required; and
 - iv. Operator is required to clean all grease trap(s) in the Restaurant Space on a monthly basis or more frequently if needed.
- 9. <u>Other Duties and Prerogatives.</u> Operator shall perform any act that is necessary to operate and manage the Theatre and the Property during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, Operator shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection and deposit of proceeds from the operation of the Theatre and the Property in accordance with the Business Plan; the incurring of trade debts (other than mortgage indebtedness); the approval and payment of obligations; and the negotiating, signing and payment with funds from the Operator's funds for leases and contracts.
- B. <u>Receipts and Proceeds.</u> The Operator's compensation for performing the Management Services shall be limited to the following:
 - 1. <u>Ticket Sales:</u> Operator shall be entitled to retain all proceeds from the sale of tickets to events that Operator schedules and hosts on the Premises.
 - 2. <u>Food and Beverage</u>: Operator shall be entitled to retain all proceeds from the sale of food and beverages on the Premises, upon payment of all applicable food and beverage taxes.
- C. <u>Pre-Approved Uses of Premises by Third Parties.</u> Operator shall permit the use of the Premises by the following designated parties at no charge.
 - 1. <u>City or Other Civic Organizations.</u> Subject to the prior booking of any precontracted and paying events, Operator shall permit the City or its related or approved, not-for profit organizations, to schedule and host on the Premises no less than eight (8) events each year at no charge to the City or the applicable civic

EXHIBIT B

organization. Such City or civic sponsored events may only be scheduled on Sundays through Thursdays, unless otherwise agreed to by Operator. Operator will staff each of these functions and may retain all food and beverage proceeds earned during these events, after the payment of all applicable food and beverage taxes.

2. <u>Use of Premises by Rivers Casino.</u> Subject to the prior booking of any precontracted and paying events, Operator shall permit the Rivers Casino to schedule and host on the Premises no less than eight (8) events each year at no charge. Rivers Casino's events may only be scheduled on weekdays during daytime business hours, unless otherwise agreed to by Operator. Operator will not be required to staff these events beyond providing access, lighting, and audio/visual support.

D. <u>Acknowledgements.</u> A donor wall, prominently displayed and located near the front entrance of the Theatre shall acknowledge Rivers Casino as a principal sponsor of the revitalizing of the Theatre. The donor wall shall also display the names of the private citizens who contributed funds to assist in the renovation and restoration of the Theatre. The donor wall shall be installed by the Owner and may not be damaged or removed by the Operator.

E. <u>General Conditions.</u>

- 1. <u>Compliance with Law; Expenditures Required for Compliance with Law.</u> In carrying out the Management Services and its general occupancy and operation of the Premises, Operator shall comply with all laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer, including specifically the City's Code of Ordinances (collectively "*Laws*") in respect of the operation, maintenance, repair and restoration of the Premises.
- 2. <u>No Unlawful or Dangerous Use.</u> Operator shall not make or permit to be made any use of the Premises which is forbidden by public law, or by any ordinance or governmental regulation or which may be dangerous to persons or property, or which may invalidate or materially increase the premium cost of any policy of insurance carried on the Premises or covering its operations (unless Operator shall pay the increase in premium cost). Operator shall not do or permit to be done, any act or thing upon the Premises which will be in conflict with fire insurance policies covering the Premises. Operator, at its sole expense, shall comply with all ordinances, laws and statutes and all rules, regulations or requirements of the local government authorities, or any other similar body, and shall not do, or permit anything to be done upon the Premises, or bring or keep anything thereon in violation of rules, regulations or requirements of the Fire Department, local government authorities or other authority having jurisdiction and then only in such quantity and manner
- 3. <u>No Pyrotechnics or Smoke/Fog Machines.</u> The use of pyrotechnics on the Premises is expressly prohibited. Smoke or fog machines may be used if approved in writing by the City of Des Plaines Fire Chief.
- 4. <u>No Video Gaming.</u> No video gaming or gambling shall be permitted on the Premises.

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F. <u>No Partnership or Joint Venture</u>. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Owner and Operator.

EXHIBIT 1 BUSINESS PLAN

ONESTICATION

Proposal to The City of Des Plaines

Re: Operator of the Des Plaines Theatre

Submitted by

Ron Onesti President and CEO, The Onesti Entertainment Corporation August 3, 2018

Statement of Interest

The Onesti Entertainment Corporation (OEC) has a sincere desire to restore the original splendor the Des Plaines Theatre once enjoyed as the center of the community, and the forefront of entertainment in the area. A venue built in "The Roaring Twenties" that will reflect its golden age yet be relevant for all customer demographics. A great theatre will bring additional local pride and national attention to the downtown Des Plaines area.

It is a very wise approach, in my experienced opinion, to include the operator of the Theatre in the planning of every phase of design, construction and implementation.

Conversely, I respect the level of commitment the City of Des Plaines has made towards this project and would very much welcome the opportunity to work together with City staff, sponsors, promotional partners and other related consultants and companies in an effort to create the best possible venue for the City of Des Plaines.

I think a triumvirate of the City of Des Plaines, Rivers Casino and Onesti Entertainment could be an incredible team that together, could create an entertainment venue like none other. Three entities TRULY concerned with the community, the Theatre and the rich history of both, but with the "eye on the prize" of the Theatre remaining a downtown icon for generations to come.

Furthermore, my "Statement of Interest" includes other opportunities within the theatre building. Expanding Theatre operations that would increase pre and post-show food and beverage experiences is an integral part of my formula for success.

I would be extremely interested in other opportunities that would create a dining experience(s) that would enhance the overall customer experience, give the building as a whole a more home-town and retro-feeling character, and additionally ensure the success of the Theatre.

2720 S. River Road, Suite 254 · Des Plaines, Illinois 60018 (Ph) 847.795.1800 · (Fax) 847.795.1804 www.O-Shows.com

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Qualifications

The Onesti Entertainment Corporation is an S Corp that has been in existence since 1996. Ron Onesti, its President, is also the Executive Producer and creative lead for the company. The management and booking of the theatre will stem from a central management team headed up by Ron Onesti.

Somewhat arrogantly stated, there is no other company better suited to lead this project than OEC. What needs to happen with the Des Plaines Theatre in 2018 is exactly what needed to happen in 2005 for the historic Arcada Theatre in St. Charles. It was a dilapidated, underutilized Vaudeville-era theatre, all but condemned.

The principal difference then as opposed to now is that the City of St. Charles did not immediately recognize neither the value nor the significance of supporting an historic, downtown venue. There was no community support, financial or otherwise.

AND, OEC was not in a financial position to write a check, and have a magical theatre appear out of nowhere. This was at the onset of the economic downfall. There were no sponsors, investors, banks interested in loaning capital. Also, there were no ticket purchasers!

OEC saw its potential and rolled up its sleeves. Doing much of the work itself, it slowly all came together. With full stage renovations, video walls, major sound and lighting systems, in-house ticketing, graphics, production, social media, marketing, hospitality, hotel, transportation and food & beverage departments, OEC has emerged as one of the country's leading concert producers.

In addition, the relationships created over the 30+ years in business have afforded OEC opportunities that are rare. To put in perspective, a comparison of shows from **August 1-Dec 31, 2018** will show the aggressive approach OEC has to booking:

Copernicus Center, Chicago...4 major shows Rialto Square, Joliet...8 major shows Genessee Theatre, Waukegan...20 major shows Arcada Theatre, St. Charles...**67 MAJOR shows** (with more shows ready to confirm!)

OEC has several foodservice operations in place, but most notable are:

Club Arcada 1920s Speakeasy & Restaurant...Located on the third floor of the Arcada Theatre building in St. Charles. In keeping with the 1920s theme of the Arcada Theatre, the design of the restaurant is spectacular with over 400 antiques and multiple rooms with fabulous food options and beverage experiences. Customers patronize the restaurant before an Arcada show, then Club Arcada produces its own musical experiences for a separate ticket, the guests come back after the show downstairs for a night cap.

The Onesti Entertainment Corporation 105 East Main Street, St. Charles, Illinois 60174 (Ph) 630.962.7000 · www.OShows.com **Rock 'N Ravioli Restaurant and Music Hall**...Evanston. A classic Italian dining experience with unique ravioli and flatbread recipes plus a 400-person House of Bluesstyle musical hall, exquisite, upscale and decorated with original artwork and stunning chandeliers.

Bourbon 'N Brass Speakeasy & Jazz Club...Evanston. Located on the second floor of the musical hall, it also provides another musical option for guests.

Plus, Onesti Entertainment produces three Italian festivals that revered across the country as being some of the best entertainment experiences of its kind.

- -Chicago's Little Italy Fest on Taylor Street
- -Addison's Little Italy Fest-West
- -Chicago's Festa Pasta Vino near Cermak & Western Avenue

To add to the qualifications piece of this proposal, as OEC President and CEO, I think the singlemost important factor to our success in St. Charles is the fact that there is a face and a name connected to the venue. People latch on to a place they can identify with, and have the opportunity to become acquainted with its person in charge. I spend countless hours at each show connecting to the audience and establishing great customer bonds.

In addition to all the great shows we produce, we have a fabulous relationship with PBS WTTW. We have shot several television specials at The Arcada, including Joan Rivers' last TV Standup Special, FOREIGNER for MTV, SHOWTIME'S Godfathers of Comedy and Richard Marx and Hugh Jackman for PBS, Andrew "DICE' Clay's New Years' Special for Showtime and Ann Wilson of HEART for SoundStage.

Personally, I have a weekly column in the Daily Herald called "Backstage with Ron Onesti". It is currently the most referred column in the paper. I am also the host for Rock 'N Roll shows on WTTW Channel 11.

Operating Plan

The management approach would be a very hands-on style, benefitting from the years of experience OEC staff has to offer. This specific model is nothing new to OEC.

The magic of the multiple locations is to feed off each other, maximizing efficiencies and costs. Specifically, many situations will exist whereby an act can perform both at the Des Plaines Theatre AND at The Arcada. Entertainer costs, marketing buys and production expenses can be streamlined and shared, making concerts at each location much more affordable.

The Onesti Entertainment Corporation 105 East Main Street, St. Charles, Illinois 60174 (Ph) 630.962.7000 · www.OShows.com

As previously stated, the management strategy would be a very community minded approach. The concept would not merely to make the Theatre successful, it would also to make it one of the most revered places to play in Illinois.

There would be individuals that have great industry experience invited to be part of the team who are currently working at the St. Charles location. I would also give opportunities to local residents to be a part of the operations of the theatre.

The main target market would focus on families, children's programing, senior presentations and music from the 1940s thru the 1990s.

But anyone can merely "book" the Theatre. It is even possible to bring in a smattering of acts that would make it worth it for an independent promoter or promoters to be financially successful and want to be a part of it.

I believe community engagement is the deciding factor between a "respectable" venue and one that can make a huge impact on economic development and community pride. That is one of the principle rea

Finally, I would also want to discuss how the corner restaurant and/or the Thai Restaurant could be a part of this deal. I am sure with the proper strategic planning, all could work together in tandem and feed off each other, thus creating a more successful venture. As much food and beverage elements should be added to the equation as possible to ensure success.

Professional references

With over thirty years in the business, I could provide many professional references, depending on what you would be looking for. I would suggest a conversation with Mayor Ray Rogina, Mayor, City of St. Charles to start with. He has seen our growth and has felt the positive impact Onesti Entertainment has made in the community.

rrogina@stcharlesil.gov

Mayor Richard Veenstra, Village of Addison, for whom I have produced outdoor festivals

mayor@addison-il.org

There are countless industry professionals I can submit as references...Agents, managers and iconic acts themselves will all vouch for OEC. Depending on what you are looking for, I can provide more references upon request.

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EXHIBIT B

But for the best references, I suggest you listen to your own constituency. As The Des Plaines Theatre project has been on the lips of locals for over a decade, there have been literally hundreds (if not thousands) of individuals who have expressed their sincere desire for Onesti Entertainment to bring its programming, design and creativity to downtown Des Plaines. A social media driven petition would provide an incredible amount of local support for Onesti Entertainment to selected as the company to bring bag its grand old Des Plaines Theatre.

A final note

With all things considered, there truly is no better option than The Onesti Entertainment Corporation as operator of the Des Plaines Theatre. The City of Des Plaines will find no better partner who can bring the pride back to its Downtown, as it enjoys incredible and impending growth.

Thank you for this opportunity.

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AUG 23 7:3	0 David Kente Tribute by Rebei Rebei
ALIG 24 BP	M Eric Martin ()f lifr. Ng Pest, Stove (Bown &
	PJ liarley Of Tristers
AUG 25 8P	Jay And The Americans + The Wogues
AUG 26 SPI	Jan & Dean's Beach Party Starring Dean Tomasco
AUG 31 BP	Zelsra "Who's Behind The Door"
SEP 1 BPI	Faces Of the King of Evis Tribute
SEP 7 BPI	Country Star Sara Barans " Could Not Ask for More"
SEP 8 BPI	Stryper // IKin
SEP 9 5PI	A Rare Earth
SEP 9 7:2	Bears Season Opener On Our Offt Screeni
SEP 13 7:3	Gionii Haghes Plays Doop Purpie
SEP 14 BPR	Buildy Gery: Special Guest Quinn Sunlivan
SEP 15 8PP	Pable Cruise Love Will Find A Way" With Off Broadway
SEP 16 311	Tony Danzo Standards & Stoniss
SEP 20 7:3	The Englise inpute by Hotel California
SEP 21 BPI	Fleetuned Mac Inducts by TUSK
	Tommy James & The Shondoils
	The Bay City Rollers 'I Only Want to Be With You"
	Accept Blood Of The Nations"
OSH	OWS.COM • 630.962.7000

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EXHIBIT C

LEGAL DESCRIPTION OF PREMISES

The Premises is legally described as follows:

PARCEL 1:

LOT 68 AND 69 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN ORIGINAL TOWN OF RAND (NOW VILLAGE OF DES PLAINES) A SUBDIVISION OF PART OF SECTIONS 16, 17, 20 AND 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-010-0000

Commonly known as 1470-1476 Miner St., Des Plaines, Illinois

PARCEL 2:

THE SOUTHEAST 30.0 FEET OF LOT 67 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEY) IN TOWN OF RAND, BEING A SUBDIVISION OF PARTS OF SECTIONS 16, 17, 20 AND SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 09-17-415-024-0000

Commonly known as 1486 and 1486 1/2 Miner St., Des Plaines, Illinois

EXHIBIT B

C-1

EXHIBIT D

RENT PAYMENTS

Rent Period	Monthly Rent
Commencement Date through Operational Date	\$0.00
Operational Date through 6th Monthly Anniversary of Operational Date/Rent Commencement Date (aka First Six Months of Operation)	\$0.00
Remaining Six Months in 1 st Year of Operation (Months Seven through Twelve of Operation)	\$10,000.00
2 nd Year of Operation	\$12,000.00
3 rd Year of Operation	\$14,000.00
4 th Year of Operation	\$16,000.00
5 th Year of Operation	\$18,000.00

EXHIBIT B



EXHIBIT E

OPERATOR BUILD-OUT IMPROVEMENTS

Improvement to Restaurant Space. Tenant shall, at its own expense, make such A. alterations, improvements, additions and changes to the Restaurant Space as it may deem necessary or expedient in connection with the initial construction and equipping of the Restaurant ("*Restaurant Improvements*"); the parties acknowledge that Tenant may have access prior to the Operational Date hereof permitting Tenant access to the Buildings to commence construction of the Restaurant Improvements. Notwithstanding the foregoing, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall not tear down or materially demolish any of the improvements on the Restaurant Space or make any material change or alteration in such improvements which, when completed, would substantially diminish the value of the Restaurant Space, require or result in structural changes to the Restaurant Space, or significantly alter the exterior of the Restaurant Space. Tenant shall not make any change in or alteration to the Restaurant Space which would violate the terms of any policy of insurance in force with respect to the Restaurant Space or required to be provided by Tenant under the provisions of this Lease. No other alterations to the Restaurant Space or the Buildings shall be permitted unless Landlord approves same and the conditions set forth below are satisfied, which such approval shall not be unreasonably withheld, conditioned or delayed.

Landlord Review and Approval. The plans, specifications and contract or contracts (and B. building department permits therefor) to be entered into by Tenant pertaining to the Restaurant Improvements shall be submitted to and approved in writing by Landlord ("Approved Plans"); provided, however, that if Landlord fails to approve Tenant's submission within ten (10) business days of submission Landlord shall be deemed to have given its approval. Tenant or its contractor shall deposit with Landlord an insurance policy or policies in an amount reasonably satisfactory to Landlord and issued by a company or companies reasonably satisfactory to Landlord, indemnifying Landlord against any and all claims of every kind, because of accident, injury or damage to any person or property arising out of the work done in connection with the making of such alterations. If Landlord disapproves of any plans, specifications, contract or contracts, Landlord's notice to Tenant of its disapproval shall specify the reasons for such disapproval. Landlord shall have the right at all times during any construction or alteration to inspect and monitor said construction and alteration and to require changes reasonably necessary and appropriate to assuring that the improvements located on the Premises will be in conformity with applicable laws, ordinances and codes, and in compliance with the Approved Plans.

C. Permits and Conduct of Construction. All Restaurant Improvements, and the construction thereof, shall at all times comply with all applicable laws, ordinances, rules and regulations of governmental authorities having or asserting jurisdiction on the Premises. Tenant, at its expense, shall (i) obtain all necessary municipal and other governmental permits, authorizations, approvals, and certificates for the commencement and prosecution of such Restaurant Improvements and for final approval thereof upon completion, (ii) deliver three copies thereof to Landlord, and (iii) cause all Restaurant Improvements to be performed in a good and workmanlike manner, using materials and equipment at least equal in quality to the original installations of the building of the then standards for the Buildings established by Landlord. Improvements shall be promptly commenced and completed and shall be performed in such manner so as not to materially interfere with the occupancy

of any guests of the Buildings nor impose any additional expense upon Landlord in the construction, maintenance, cleaning, repair, safety, management, security or operation of the Buildings or any building equipment; and if any such additional expenses shall be incurred by Landlord as a result of Tenant's performance of any Restaurant Improvements, Tenant shall pay such additional expense as additional rent upon ten (10) days written notice. Tenant shall furnish Landlord with satisfactory evidence that the insurance required during the performance of the Restaurant Improvements is in effect at or before the commencement of the Restaurant Improvements.

- D. <u>Proof of Compliance.</u> Upon completion of any alterations or additions, including without limitation the Restaurant Improvements, Tenant shall furnish Landlord with: (i) evidence satisfactory to Landlord that all of Tenant's trade fixtures and installations have been fully paid for; (ii) contractor's affidavits and full and final waivers of lien or receipted bills covering all labor and materials expended and used; and (iii) with an endorsement to Landlord's title insurance policy insuring over all claims arising from such constructions, alterations and additions, obtained by Tenant, but which will be paid for by Landlord. All alterations and additions shall comply with all ordinances and regulations of any pertinent governmental Agency. All alterations and additions shall be constructed in a good and workmanlike manner and good grades of new materials shall be used.
- Ε. Mechanic's Liens. Tenant shall promptly pay all contractors and materialmen and vendors of trade fixtures and shall not permit or suffer any lien or secured interest to attach to the Buildings, the Premises or Tenant's Fixtures or any part thereof, and shall indemnify and save harmless Landlord against the same. In the event any such secured interest or lien or claim for lien is filed and Tenant fails to contest or cause said lien or claim for lien to be effectively removed of record or insured over by the title company issuing title insurance coverage to Landlord to Landlord's reasonable satisfaction within thirty (30) days after Landlord's notice to do so, Landlord, may, at its election, remove such lien or claim for lien by paying the full amount therefor or otherwise without any investigation or contest of validity thereof, and Tenant shall pay to Landlord upon demand the amount paid out by Landlord in such behalf, including Landlord's reasonable costs, expenses and counsel fees, and interest at the rate of interest equal to the "prime rate" last announced, as of the date such proceeding is initiated by MB Financial Bank, N.A. plus 4% ("Lease Interest Rate"). In the event Tenant contests any claim, Tenant shall provide security against such claim reasonably satisfactory to Landlord. The provisions of this Section shall survive the expiration or earlier termination of this Lease.
- F. Limitation of Landlord's Liability. No approval of plans or specifications by Landlord or consent by Landlord allowing Tenant to make Restaurant Improvements in the Premises shall in any way be deemed to be an agreement by Landlord that the contemplated improvements comply with any applicable laws, ordinances, rules and regulations of governmental authorities having or asserting jurisdiction in the Premises or the certificate of occupancy for the Restaurant Space nor shall it be deemed to be a waiver by Landlord of the compliance by Tenant of any of the terms of this Lease. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant and that no mechanics or other lien for such labor or materials shall attach to or affect any estate or interest of Landlord in the Buildings.
- G. <u>Removal and Restoration by Tenant.</u> All alterations, changes and additions and all improvements, including leasehold improvements, made by Tenant shall remain Tenant's property for the Term of this Lease, so long as Tenant is not then in default hereunder

beyond any applicable grace and/or cure period after applicable notice. When the Lease terminates, (i) Tenant shall not be required to remove any improvements or alterations made with Landlord's approval or Landlord's Work, and (ii) Landlord shall advise Tenant concurrently with the giving of such approval, if any, whether Landlord shall require Tenant to remove any or all Operator Build-Out Improvements or alterations made to the Premises during or prior to the expiration of the Lease Term. Any improvements that Landlord does not require to be removed shall belong to Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures, furnishings and equipment of Tenant that can be removed without defacing the Premises or the Buildings (subject to Tenant's right to remove provided any damage to the Premises is repaired by Tenant). Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment.

H. Required Components of Restaurant Improvements. Tenant shall, at Tenant's sole cost and expense, maintain: (i) a hood system to prevent grease from exhaust systems serving the Restaurant Space from dripping onto the roof of the Buildings, and (ii) its own individual grease trap (grease interceptor system including all requisite plumbing associated therewith) to prevent fats, oils and grease generated from Tenant's business operations at the Premises from entering and clogging the sanitary sewer system of the Buildings. Tenant's maintenance of the hood system and grease trap/grease interceptor system shall be in accordance with all applicable laws, codes, regulations and ordinances of governmental authorities. Such hood system and grease trap/grease interceptor system shall be properly maintained, operated, cleaned, repaired and replaced periodically by Tenant at its sole cost and expense, in accordance with all applicable laws, building codes, regulations and ordinances of governmental authorities and any replacement of the hood system and/or grease trap/grease interceptor system shall be in accordance with the requirements herein for the installation thereof. Tenant shall dispose of all cooking grease, oils, fats and filters generated from its business operations at the Premises in compliance with the maintenance and disposal standards and procedures established from time to time by Landlord in its reasonable judgment and all applicable Federal, State and local laws, building codes, regulations and ordinances.

EXHIBIT F

SOUND AND LIGHTING EQUIPMENT

MAIN SPEAKER HOUSE SYSTEM

- 14 EAW RSX212L 2-WAY SELF-POWERED LOUDSPEAKER
- 2 EAW 2050388-90 FBX200 (RSX212L/RSX18F Flybar)
- 6 EAW RSX218 DUAL 18 INCH SELF-POWERED SUBWOOFER

FRONT FILLS

8 EAW RSX126 2-WAY SELF-POWERED LOUDSPEAKER

FRONT OF HOUSE AUDIO CONSOLE

- 1 Yamaha CL5 Digital Mixing Console
- 1 MT CL5FC_DH Yamaha CL5 Flight Case w/ Doghouse

MONITOR CONSOLE

- 1 Yamaha CL5 Digital Mixing Console
- 1 MT CL5FC_DH Yamaha CL5 Flight Case w/ Doghouse

STAGE I/O

2 Yamaha RIO3224-D2 32 mic/line inputs, 16 analog outputs, 4 Stereo AES/EBU outputs, 44.1/48/88.2/96kHz Dante[™] digital network remote I/O unit.

STAGE MONITOR SYSTEM

8 EAW RSX12M 2-WAY SELF-POWERED STAGE MONITOR

DRUM FILL

- 1 EAW RSX126 2-WAY SELF-POWERED LOUDSPEAKER
- 1 EAW RSX18F 18 INCH SELF-POWERED SUBWOOFER

EXHIBIT B

SIDE FILLS

- 2 EAW RL15 TWO-WAY ACTIVE TRAPEZOIDAL ENCLOSURE
- 6 EAW RL18S ACTIVE SUBWOOFER

NETWORKING

4 Yamaha SWP1-8MMF 8 Neutrik etherCON + 2 internal SFP Slots, 1 MMF-SWP1 kit pre-installed"

CABLING, MISC

1 OSA OSAR Reference A/V/Network Cabling

LIGHTING FIXTURES

- 32 Martin Lighting RUSH PAR 1 RGBW LED PAR Can
- 32 The Light Source MAB Mega Clamp in Black

LEKOS

- 13 ETC SOURCE 4 750W Ellipsoidal With 26 Degree Lens, Edison Connector
- 13 The Light Source MAB Mega Clamp in Black
- 18 Osram Sylvania HPL750/115X-OS 750W, 115V Long Life Halogen Lamp

MOVING LIGHT FIXTURES

16 Martin Lighting RUSH MH 1 Profile Plus Moving Head LED Light Fixture

LIGHTING CONSOLE

 Avolites TigerTouch2 Lighting Control Surface with 15.6"" Touchscreen, 4 DMX Outputs (16 over ArtNet or sACN), 10 Playback Faders, and 3 Optical Encoders, and Avolites Titan Software License - Windows PC

POWER AND SIGNAL DISTRIBUTION

- 3 LEX EGME-1214-75 EverGrip 12 AWG 14 Cond. Multi-Flex w/ LSC Series 75'
- 48 Whirlwind DMX3P25 Cable DMX, 3-pin, XLRF to XLRM, 25', W1696A
- 3 Whirlwind PL2-SPX-1-12P-000 20A 12 PowerCON Outlets with 24 AWG UTP Stinger
- 1 OSA OSAR Reference A/V/Network Cabling

EXECUTION VERSION

RIGGING EQUIPMENT

- 1 Supplemental Steel Allowance
- 9 Hoist Beam Bracket
- 9 Half Ton D8+ Hoist w/ 50' lift, LatchLoks, and chain bag
- 2 One Ton D8+ Hoist w/ 50' lift, LatchLoks, and chain bag
- 9 Hoist Truss Bracket
- 16 12"" x 12"" x 120"" Spigot Truss
- 16 12"" Truss Black PC
- 1 12-Channel Install Controller, Control Side
- 1 12-Channel Install Controller, Power Side
- 1 12-Channel Pendant
- 2 100' Pendant Extension
- 1 12-Channel Pendant Junction Box w/ E-stop
- 11 P14 Hoist Junction Box
- 1 FOH Truss Teaser
- 1 Lindapter and other Hardware (lot)

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DES PLAINES, ILLINOIS HELD IN THE ELEANOR ROHRBACH MEMORIAL COUNCIL CHAMBERS, DES PLAINES CIVIC CENTER, MONDAY, JUNE 3, 2024

- CALL TO
ORDERThe regular meeting of the City Council of the City of Des Plaines, Illinois, was called to
order by Mayor Goczkowski at 6:00 p.m. in the Eleanor Rohrbach Memorial Council
Chambers, Des Plaines Civic Center on Monday, June 3, 2024.
- **<u>ROLL CALL</u>** Roll call indicated the following Aldermen present: Lysakowski, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz. Alderman Moylan (6:01 pm) A quorum was present.

<u>CLOSED SESSION</u> Moved by Smith, seconded by Walsten, to convene into Closed Session under the following sections of the Open Meetings Act – Pending Litigation and Probable and Imminent Litigation. Upon roll call, the vote was:

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, CharewiczNAYS:0 -NoneABSENT:0 -None

Motion declared unanimously carried.

The City Council recessed at 6:01 p.m.

The City Council reconvened at 7:00 p.m.

Roll call indicated the following Alderman present: Lysakowski, Moylan, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz. A quorum was present.

Also present were: City Manager Wisniewski, Acting Director of Finance Podbial, Director of Public Works and Engineering Oakley, Director of Community and Economic Development Rogers, Fire Chief Matzl, Police Chief Anderson, and General Counsel Friedman.

PRAYER AND PLEDGE	The prayer and the Pledge of Allegiance to the Flag of the United States of America were offered by Alderman Smith.
PROCLAMATION	Deputy Clerk Fast read a proclamation by Mayor Goczkowski declaring June Pride Month.
<u>SWEARING-IN</u>	Mayor Goczkowski administered the Oaths of Office to Matthew Matzl, Fire Chief; Joseph Ciraulo, Deputy Chief; Michael Rioch, Battalion Chief; Danel Garhan, Lieutenant; Robert Chapman, Firefighter/Paramedic/Engineer; Dylan Lersch, Firefighter/Paramedic, and Ryan Schelin, Firefighter/Paramedic.
	Fire Chief Matzl thanked the City Council for the opportunity to serve as Fire Chief and expressed appreciation for the staff and community.
<u>ALDERMAN</u> ANNOUNCEMENTS	Alderman Sayad thanked the staff for the valuable information they provided at the 4 th ward meeting on May 23. He also thanked the individuals responsible for the Memorial Day program and thanked the men and women for serving in the military.
	Alderman Walsten announced that there will be a 6^{th} ward meeting on June 20, Leisure Center at 7:00 p.m.and expressed gratitude for all those in the military.
	Alderman Smith stated the Whalen family will be having a fundraiser on June 5th at Zanies Rosemont; the tickets are \$20 along with a two-item purchase. She also stated there will be an upcoming 7 th ward meeting at the Frisbie Center on Tuesday. June 11th at 7:00 p.m.

Alderman Charewicz announced the 8th ward meeting will be held on June 4, Friendship Conservatory at 7:00 pm. June 6-9 is West Fest at Maine West High School. Also, on June 15 volunteers will meet at Izaak Walton League at 10:00 am to clean-up along the Des Plaines River.

Alderman Oskerka congratulated the Fire Department personnel that were sworn in.

MAYORALMayor Goczkowski reminded everyone that the Taste of Des Plaines is June 14 and June 15ANNOUNCEMENTSand beginning this year the event will be cashless.

MANAGER'SCity Manager Wisniewski expressed her gratitude and congratulated the Fire DepartmentREPORTpersonnel.

<u>CONSENT AGENDA</u> Moved by Sayad, seconded by Brookman, to Establish the Consent Agenda. Upon voice vote, the vote was:

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, CharewiczNAYS:0 -NoneABSENT:0 -NoneMotion declared carried.

Moved by Brookman, seconded by Sayad, to Approve the Consent Agenda. Upon roll call, the vote was:

AYES:	8 -	Lysakowski, Moylan, Oskerka, Sayad,				
		Brookman, Walsten, Smith, Charewicz				
NAYS:	0 -	None				
ABSENT:	0 -	None				
Motion declared carried.						

Minutes were approved; Ordinance M-9-24 was approved; Resolutions R-109-24, R-110-24, R-111-24, R-112-24 were adopted.

AWARD BID/	Moved by Brookman, seconded by Sayad, to Approve Resolution R-109-24, A
HAMMER	RESOLUTION APPROVING AN AGREEMENT WITH HAMMER CONSTRUCTION,
CONSTRUCTION	LLC FOR MAINTENANCE REPAIRS ON CITY-OWNED PARKING STRUCTURES.
Consent Agenda	Motion declared carried as approved unanimously under Consent Agenda.

Resolution R-109-24

RELEASE CERTAINCLOSED SESSIONMINUTES ANDRECORDINGSConsent Agenda

Moved by Brookman, seconded by Sayad, to Approve Resolution R-110-24, A RESOLUTION APPROVING THE RELEASE OF CERTAIN MINUTES OF CERTAIN CLOSED MEETINGS OF THE CITY COUNCIL AND AUTHORIZING THE DESTRUCTION OF CERTAIN VERBATIM RECORDINGS. Motion declared carried as approved unanimously under Consent Agenda.

Resolution R-110-24

APPROVE ADDENDUM TO INTERGOVMNTAL AGMT IL STATE TOLL & ELK GROVE Consent Agenda Moved by Brookman, seconded by Sayad, to Approve Resolution R-111-24, A RESOLUTION APPROVING A FIRST ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT WITH THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY AND INTERGOVERNMENTAL AGREEMENT WITH THE VILLAGE OF ELK GROVE VILLAGE IN CONNECTION WITH THE ELGIN O'HARE Consent Agenda.

Resolution **R-111-24**

APPROVE **PURCHASE OF** SERVERS/IT SAVVY, LLC **Consent Agenda**

READING/AMEND CITY CODE Consent Agenda

Ordinance **M-9-24**

APPROVE

APPROVE **MINUTES Consent Agenda**

NEW BUSINESS

WARRANT REGISTER Resolution R-108-24

CONSIDER

APPROVING CU, MAJOR AND STANDARD

VARIATION FOR

Alderman Sayad presented the Warrant Register.

Alderman Sayad stated that as of March 31, 2024, the estimated general fund balance was \$26,529,613.00.

WESTERN ACCESS PROJECT. Motion declared carried as approved. unanimously under

Moved by Brookman, seconded by Sayad, to Approve Resolution R-112-24, A

RESOLUTION APPROVING THE PURCHASE OF SERVERS FROM IT SAVVY, LLC.

Moved by Brookman, seconded by Sayad, to Approve Second Reading Ordinance M-9-24, AN ORDINANCE AMENDING SECTION 7-3-9 OF THE CITY CODE REGARDING

RESIDENTIAL PARKING AND RESTRICTED RESIDENT PARKING DISTRICTS.

Moved by Brookman, seconded by Sayad, to Approve the Minutes of the City Council

meeting of May 20, 2024, as published. Motion declared carried as approved unanimously

Moved by Brookman, seconded by Sayad, to Approve the Closed Minutes of the City Council meeting of May 20, 2024, as published. Motion declared carried as approved

Motion declared carried as approved. unanimously under Consent Agenda.

Motion declared carried as approved unanimously under Consent Agenda.

Moved by Sayad, seconded by Smith, to Approve the Warrant Register of June 3, 2024, in the Amount of \$7,143,186.62 and Approve Resolution R-114-24. Upon roll call, the vote was:

AYES: 8 - Lysakowski, Moylan, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz NAYS: 0 -None 0 -ABSENT: None Motion declared carried.

COMMUNITY DEVELOPMENT – Alderman Moylan, Chair

Director of Community & Economic Development Rogers reviewed a memorandum dated May 23, 2024.

Vasile Haures (1387 Prospect Ave. LLC), 1980 Pine Street, Des Plaines, IL 60018 is requesting the following: (i) conditional use for a trade contractor use; (ii) standard variation

Resolution R-112-24	
SECOND	
DEADINC/AMEND	

MINUTES **Consent Agenda**

unanimously under Consent Agenda.

FINANCE & ADMINISTRATION – Alderman Sayad, Chair

under Consent Agenda.

1387 PROSPECT AVENUE

to reduce the required front yard; and (iii) a major variation to allow the loading space to face a public way (alley).

The property is currently undeveloped and is located at the southwest corner of the Prospect Avenue and Chestnut Street intersection. In 2022, a zoning map amendment was approved to change the zoning of this property from C-1, Neighborhood Shopping to C-3, General Commercial. A multitenant office building was contemplated when the property was re-zoned. Since 2022, this property was sold to the petitioner. Historic aerials and city records do not indicate any structure has existed on this property in known history.

The area surrounding the property is generally commercial and townhouses. However, the property immediately adjacent to the subject project, 1383 Prospect Avenue, is a single-family house re-zoned from C-1, Neighborhood Commercial to R-1, Single Family Residential in 2016. The presence of an adjacent single family residential property creates additional requirements in terms of the required front yard and requires a landscape and fence buffer between the properties.

The petitioner, Vasile Haures, is proposing to construct a one-story commercial building for a trade contractor use. The building will include two tenant spaces. The east half will include a showroom, office, and fabrication/storage area for a hardwood flooring business. The other tenant space will be occupied by a similar business, to be determined by the petitioner at a later date; note all proposed and future tenants will be required to follow the same conditions, should the proposed ordinance be approved.

Trade Contractor Use

A business classified as a "trade contractor" is defined in the zoning ordinance as.

"A building or portion thereof where building and construction trade services are provided to the public. "Trade contractor" shall include, but will not be limited to, contractor offices, including landscaper's showrooms, construction supplies and storage including plumbing, heating, air conditioning, and building equipment, materials, sales, and other uses similar in nature and impact." (Section 12-13-3).

Refer to the Petitioner's Letter of Intent for business operation information. The petitioner describes their business as a hardwood flooring company. Customers will be able to access the showroom by appointment only. Other services performed onsite will be deliveries and pickups of materials and limited fabrication work (e.g. custom cutting of hardwood planks). Activities would mostly include performing installation and finishing pre-made materials offsite at customer locations. The business currently includes two employees and four subcontractors.

Storage of materials must occur indoors, except as permitted by Section 12-7-F.5.d. Trade contractor businesses in the C-3 district can display materials outside of the building, although they cannot be displayed within any required yards. With the current site plan, there are few locations on the property where outdoor display would be possible. The petitioner has not indicated any intent to display materials outdoors; if interest is proposed in the future to display materials, all requirements of Section 12-7-3.F.5.d would need to be followed, limiting the location, height and types of material displayed.

Proposed Building and Front Yard Variation

The proposed building on the site will be 4,512 square feet in size and one story, 17 feet 9 inches in height. Two overhead doors are located adjacent to the alley, with a loading zone present in front of each door. Although the petitioner at this time only intends to have one

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use in this space, the building could be separated into two separate spaces; any future businesses in this location would need to meet requirements of the C-3 zoning district. An accessible parking space is also provided at the rear of the building. Landscaping and fencing are noted on the site plan to meet landscape buffer requirements pursuant to Section 12-10-9.

In the C-3 zoning district, the required front yard is required to match the required setback of any adjacent residential district, or 5 feet if it is not adjacent to residential. This property is adjacent to an R-1 zoned property on the west side, thus requiring a 25-foot front yard setback. A standard variation to reduce the required front yard is requested to allow the building to be setback 5 feet instead of 25 feet from the property line. This distance of the building from the property line is consistent with the other commercial properties on this block.

The current building design does not meet Section 12-3-11 – Building Design Standards. The proposed materials meet requirements, with brick and metal proposed on the façade. However, for street-facing elevations (north and east facades) a minimum of 50% transparency from 2 feet to 9 feet above the sidewalk is required for this type of use. The petitioner may request a minor variation, reviewed administratively by zoning staff, to vary from this requirement.

Off-Street Parking

The trade contractor use does not require a specific amount of off-street parking per Section 12-9-7. Because trade contractor is a conditional use within the C-3 Zoning District, a specific amount or location of off-street parking can be a condition of approval. On-street parking is available on Prospect Avenue and on the west side of Chestnut Street.

One accessible parking space is noted on the site plan adjacent to the loading spaces and four standard parking spaces (two tandem spaces) are provided inside the building, accessible through the loading zone and overhead doors. The zoning ordinance does not permit tandem spaces for any *required* offstreet parking spaces, stating that all spaces must open directly to an aisle or driveway. However, because the trade contractor use does not *require* offstreet parking spaces, it only must be designed to provide "appropriate means of vehicular access to street or alley" (Section 12-9-9).

The conditional use process allows the flexibility to determine if the indoor tandem spaces will provide sufficient parking and if the tandem spaces can be managed in a way that provides appropriate means of access to the alley. If the Council requires modifications to the parking plan or if it is determined that parking agreements should be sought to relieve parking concerns associated with this use, a condition of approval can be added to the ordinance.

Traffic and Loading

Access to the property will be provided by the existing 16-foot-wide alley accessed from Chestnut Street. Traffic generated by this use would include vehicle trips associated with employees, customers and deliveries and loading of materials. A major variation is requested to allow for the loading zones to open onto the alley. Due to the location and size of the property, the loading zone area opening into the alley provides access without requiring an additional curb cut along Chestnut Street or Prospect Avenue.

The Letter of Intent provided by the petitioner (refer to attachments) states deliveries will occur between 8 A.M. and 5 P.M. on weekdays, and larger deliveries would be scheduled outside of peak traffic hours. Loading and unloading will occur within the building or within the designated loading zones. Suggested conditions of approval state that any loading and

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unloading outside of the building may not occur between the hours of 10:00 P.M. and 7:00 A.M., loading and unloading cannot occur within any public ways, and any on-street parking of vehicles related to the business must be limited to the duration of time it takes for deliveries.

Due to the proposed use of the alley for entrance and exit for all loading, deliveries and parking, and the poor condition of the existing pavement, a suggested condition of approval is to complete alley improvements. The petitioner acknowledges this condition in the Letter of Intent and states plans for the improvements will be provided at the time of building permit.

Noise

Any business within the City must abide by Section 6-2-7 of the Municipal Code, which includes measures to limit excessive noise and penalties for violating this ordinance. As stated during the public hearing during the Planning and Zoning Board meeting on May 14, 2024, the petitioner's business is unlikely to produce significant noise, as most activities involving power tools are conducted at a client's property rather than at the business itself. Any activities of the east tenant would be required to follow the same conditions, if this conditional use permit is approved.

The PZB held a public hearing on May 14, 2024 to consider the requests. The PZB consolidated their determination for all requests into one motion voting 4-0, with one member abstaining, to recommend that City Council approve the requests with the five staff recommended conditions. The rationale for the PZB's vote is captured in the attached Excerpt of Draft Minutes from the May 14, 2024 PZB Meeting.

Pursuant to Sections 12-3-4.D.4 and 12-3-6.G.2.c of the Zoning Ordinance, the Council has the final authority on the Conditional Use and Major Variation. Pursuant to Section 12-2-2.C, the Council has final authority on Standard Variation requests, when connected with relief within city council jurisdiction. The Council may approve, approve with modifications, or deny Ordinance Z-7-24. If the City Council decides to approve these requests, staff and the PZB recommend the following conditions:

- 1. Full reconstruction of the portion of alley along the rear frontage is required, with a catch basin connected to the storm sewer in Chestnut Street. The improvements must be demonstrated on plans prior to issuance of a building permit.
- 2. Prior to issuance of a building permit, replacement of existing public sidewalks deemed unsatisfactory must be demonstrated on plans, as determined by the Director of Public Works and Engineering or their designee.
- 3. A turning radii exhibit is required to be submitted prior to issuance of building permit demonstrating acceptable turning radiuses for loading/unloading, to the satisfaction of the Director of Public Works and Engineering or their designee.
- 4. Loading and unloading of materials outside of the building is prohibited between the hours of 10:00 P.M. and 7:00 A.M. No loading and unloading can occur within any public ways.
- 5. Relocation of vehicles associated with the business to allow for deliveries shall occupy public on-street parking only as necessary during the delivery.

Moved by Brookman, seconded by Walsten, to Approve First Reading of Ordinance Z-7-24, AN ORDINANCE APPROVING A CONDITIONAL USE, MAJOR VARIATION, AND STANDARD VARIATION FOR 1387 PROSPECT AVENUE, DES PLAINES, ILLINOIS (CASE #24-014-CU-V). Upon voice vote, the vote was:

AYES:	8 -	Lysakowski,	Moylan,	Oskerka,	Sayad,
		Brookman, Wa	alsten, Smit	h, Charewic	Z;
NAYS:	0 -	None			
ABSENT:	0 -	None			

Motion declared carried.

Moved by Brookman to advance to second reading, seconded by Smith, to Adopt Ordinance Z-7-24, AN ORDINANCE APPROVING A CONDITIONAL USE, MAJOR VARIATION, AND STANDARD VARIATION FOR 1387 PROSPECT AVENUE, DES PLAINES, ILLINOIS (CASE #24-014-CU-V). Upon roll call, the vote was: AYES: 8 - Lysakowski, Moylan, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz: NAYS: 0 -None ABSENT: 0 -None Motion declared carried.

Director of Community & Economic Development Rogers reviewed a memorandum dated May 23, 2024.

The petitioner, Brickton Montessori (Representative: Erica Lane, 8622 W. Catalpa Ave, Chicago, IL 60656), is requesting text amendments to the Zoning Ordinance under 12-3-7 to create an allowance with a conditional use permit for childcare center uses in the I-1 district. *This is related to map amendment, conditional use, and major variation requests under the same case number for a proposed private school and childcare center development at 1655 and 1695 S. Des Plaines River Road.*

A childcare center, defined below, is not listed as a permitted or conditional use in the Institutional Use Matrix in Section 12-7-5.A.6, and therefore requires a text amendment to be added as an allowed use in the I-1 Institutional district.

CENTER, CHILDCARE: Any place other than a family home in which persons receive childcare services during any part of a day not exceeding thirteen (13) hours in any twenty-four (24) hour period.

Childcare centers are governed by Section 12-8-7 of the Zoning Ordinance and currently require a conditional use permit in all districts in which they are allowed, including the R-4 Central Core Residential district, M-2 General Manufacturing district, and all commercial districts with the exception of the C-6 Casino district where childcare centers are not allowed.

The petitioner has worked with staff and formally requested the proposed text amendments to Section 12-7- 5.A.6 of the Zoning Ordinance as identified in Ordinance Z-8-24. Based on the proposal, a childcare center use would require a conditional use permit in the I-1 district, which is consistent with the current designations in the zoning districts above. No footnotes or other language is proposed as part of this request.

The PZB held a public hearing on May 14, 2024, to consider the requests. The PZB consolidated their determination for all requests into one motion voting 5-0 to recommend that City Council approve the Text Amendment request and related Map Amendment, Conditional Use, and Major Variation requests under Ordinance Z-9-24. The rationale for the PZB's vote is captured in the attached minutes from the May 14, 2024 meeting.

Pursuant to Section 12-3-7.D.4 of the Zoning Ordinance, the Council has the final authority on the Text Amendment request. The Council may approve, approve with modifications, or deny Ordinance Z-8-24, which includes the requested text amendment for childcare center uses in the I-1 district.

CONSIDER TEXT AMENDMENT TO ALLOW CHILDCARE CENTERS IN THE I-1 INSTITUTIONAL DISTRCT

ORDINANCE Z-8-24 Moved by Moylan, seconded by Walsten, to Approve First Reading of Ordinance Z-8-24, AN ORDINANCE AMENDING THE TEXT OF THE DES PLAINES ZONING ORDINANCE REGARDING CHILDCARE CENTERS IN THE I-1 INSTITUTIONAL DISTRICT. Upon voice vote, the vote was:

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, Charewicz;NAYS:0 -NoneABSENT:0 -NoneMotion declared carried.Variable of the second second

Moved by Walsten to advance to second reading, seconded by Oskerka, to Adopt Ordinance Z-8-24, AN ORDINANCE AMENDING THE TEXT OF THE DES PLAINES ZONING ORDINANCE REGARDING CHILDCARE CENTERS IN THE I-1 INSTITUTIONAL DISTRICT. Upon roll call, the vote was:

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, Charewicz;NAYS:0 -NoneABSENT:0 -NoneMotion declared carried.Variable

Director of Community & Economic Development Rogers reviewed a memorandum dated May 23, 2024.

The petitioner, Brickton Montessori (Representative: Erica Lane, 8622 W. Catalpa Ave, Chicago, IL 60656), is requesting the following under the Zoning Ordinance for the properties at 1655 and 1695 S. Des Plaines River Road: (i) Map Amendments to rezone both properties to the I-1 district; (ii) a Conditional Use for a childcare center; (iii) Major Variations for the location and setback of a parking lot; (iv) Major Variations for interior and perimeter parking lot landscaping; and (v) a Major Variation for landscape buffer regulations. *This is related to a text amendment request under the same case number to create an allowance with a conditional use permit for childcare center uses in the I-1 district.*

While not part of the Part 1 entitlements listed above, the petitioner will also be separately requesting a combined Tentative and Final Plat of Subdivision to consolidate the existing two lots into one lot of record. However, the effectiveness of the Part 1 entitlements will be contingent on the approval of the final engineering plans and Tentative and Final Plat of Subdivision requested as the Part 2 entitlement.

The subject properties are both located along Des Plaines River Road in the City of Des Plaines but are bounded by the Des Plaines River and the Cook County Forest Preserve in unincorporated Cook County.

The property at 1655 S. Des Plaines River Road is currently unimproved. However, the property at 1695 S. Des Plaines River Road is improved with a two-story, 19,000-square-foot commercial building with a surface parking area as shown on the attached ALTA/NSPS Land Title Survey.

Both properties abut the Des Plaines River on their eastern boundaries and, based off the current Federal Emergency Management Agency (FEMA) flood hazard maps, are located entirely within a flood hazard zone and a portion of the regulatory floodway. As such, any proposal is required to conform with all FEMA and City of Des Plaines Flood Control regulations prior to the construction of any improvements on either property.

Petitioner Erica Lane, on behalf of Brickton Montessori, intends to purchase the properties at 1655 and 1695 S. Des Plaines River Road and repurpose both for a private school and

CONSIDER APPROVING A MAP AMEND/C.U./MAJOR VARIATIONS/1655 AND 1695 S. DES PLAINES RIVER ROAD

ORDINANCE Z-9-24

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childcare center. The Brickton Montessori school has been serving the northwest Chicago suburban communities since 1986 providing education and childcare services for children 3 months to eighth grade as specified in the attached Project Narrative. While both uses will operate in the same building as one entity, designated areas for both the childcare center and private school have been identified on the attached Architectural and Site Plan Set with the childcare center use areas concentrated on the first level and the private school use spread between the two floors. See the project narrative for additional information on both the proposed childcare and private school uses.

Preliminary Improvements Proposed

The proposal includes both building and site improvements to accommodate the childcare center and private school uses. While the petitioner is interested in preserving the existing office building as much as possible, the proposed childcare and private school uses require specific updates to the building to meet current building and fire codes. As such, the Floor Plan details the required alterations to the building's interior, which will be reviewed further at time of building permit to ensure compliance with all regulations.

The size, location, and setbacks of the existing office building were not subject to change and no new building is proposed for the vacant 1655 S. Des Plaines River Road property. Note that the site improvement plans submitted are preliminary and will be finalized during the subdivision request stage.

Flood Control Considerations

The largest improvement proposed is the flood wall, which is necessary to comply with the FEMA and City of Des Plaines Flood Control regulations. The petitioner has submitted the preliminary engineering drawings and flood wall details as a reference to their solution to address the necessary flood control considerations for the subject properties. The Public Works and Engineering (PWE) department has reviewed the preliminary engineering submittal provided by the petitioner (see PWE Preliminary Letter) and has noted that the final engineering drawings and flood wall details must be prepared and stamped by a structural and professional engineer. These engineering plans will need to be reviewed and approved by PWE prior to the hearing of the future subdivision request.

Request Overview

The proposal requires several zoning requests under Title 12 Zoning. These requests are necessary to correct the property zoning for the change in use, permit the childcare center use, and receive relief from the zoning requirements noted in the referenced code sections.

MAP AMENDMENT

Overview

The subject properties at 1655 S. Des Plaines River Road and 1695 S. Des Plaines River Road are currently zoned C-3 General Commercial and M-1 Limited Manufacturing respectively, neither of which allow a private school or childcare center use. However, the 2019 Comprehensive Plan recognizes schools, libraries, community organizations, places of worship, and other public facilities that provide similar services to Des Plaines residents as institutional uses. As such, a proposed rezoning of both properties to the I-1 Institutional district is consistent with the goals and objectives of the comprehensive plan based on the uses proposed. In addition, the I-1 district currently allows private schools as a permitted use.

While childcare centers are currently not allowed in this district, a text amendment has been requested to add this use to the Institutional District Use Matrix as a conditional use.

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Bulk Regulations

A private school and childcare center are subject to the bulk regulations in Section 12-7-5.A.7 of the Zoning Ordinance. Note that while site is currently comprised of two separate properties under different ownership and zoning, a subdivision or consolidation will be required as part of the approval for the requests described in this report. As such, the figures identified under the *Proposed* column assume the consolidation of the two lots into one lot of record. The site currently is improved with a parking area located in front of the existing building. While this is not an issue for a lot in the M-1 district, parking lots are not permitted in the front yard of an I-1-zoned lot. As such, the petitioner is requesting a variation from this standard.

Site Plan Review

Pursuant to Section 12-3-7.D.2 of the Zoning Ordinance, a Site Plan Review is required for all map amendment requests to assess how the request meets the characteristics identified in Section 12-3-2. Note that the Site Plan may be adjusted as necessary by the petitioner to address staff/public comments and incorporate all needs of the proposed private school and childcare center development.

CONDITIONAL USE

Overview

Upon approval of the text amendment to Section 12-7-5.A.6 of the Zoning Ordinance, a conditional use permit will be required for the proposed childcare center use. Section 12-3-4 of the Zoning Ordinance governs the procedure for review of uses—or in this case two separate principal uses-that are unique in character and require additional consideration of the impact of those uses upon neighboring lands and upon the public need for the particular use of the particular location(s). However, given the second principal use, private school, also proposed for this development, the analysis below will assess how both uses will coexist and operate on the site based on the petitioner submittals and the potential impacts of the entire development on the community as a whole.

Floor Plan and Elevations

Brickton Montessori School operates the private school and childcare center operations as one entity. That said, the Floor Plan in Architectural Plans designates the building areas devoted to each of the proposed uses as well as general areas for building operations. While there are no proposed changes in size, location, and height of the existing building, entrances to the building will be altered and new pedestrian access stairs, ADA accessible ramps, and emergency egress landing will be provided based on the required flood wall improvements.

The proposal does not include any changes to the exterior brick building façade of the existing two-story office building. However, the following exterior building improvements are proposed:

- Replace existing windows with new windows;
- Add new egress ramp on the south elevation and new egress doors; and
- Add new elevated deck with fall protection on front (west elevation) and side (south elevation) of the building.

Off-Street Parking

Sections 12-9-7 and 12-9-8 of the Zoning Ordinance govern the number of offstreet standard and accessible parking spaces required based on the property uses. Given the floor plan information above, the following are the parking requirements for the proposed private school and childcare center uses:

		Required Spaces		
Use	Parking Calculation	Current	Future Max	
		Enrollment (89	Enrollment	
		students;	(144 students;	
		43 children)	52 children)	
Private School		16 spaces	16 spaces	
 Elementary 	plus one space per 200 SF of area	(9 classrooms;	(9 classrooms;	
(Students)	devoted to offices	1,225 SF of	1,225 SF of	
		office area)	office area)	
Childcare	One space for every 15	15 spaces (43	16 spaces (52	
Center	children, plus one space for	children; 12	children; 12	
(Children)	every employee	staff members)	staff members)	
Total Off-	Street Parking Required	31 (incl. two	32 (incl. two	
		accessible)	accessible)	
Total Off-	Street Parking Provided	38 (incl. two access	ible)	

Access and Circulation

There is currently one full access point to the subject property off Des Plaines River Road, which will be maintained as part of this proposal. Based on the findings of the Traffic Impact Study, the petitioner intends to add a second limited access curb cut on the northwest portion of 1695 S. Des Plaines River Road to allow another entrance off of and exit onto northbound Des Plaines River Road to accommodate traffic flow. The addition of the second curb cut will require review and approval from the PWE department as this portion of Des Plaines River Road is under the City's jurisdiction.

The existing two-way drive aisles will be maintained in the parking area to allow for more sufficient vehicle circulation throughout the site. In addition, the proposal includes some parking area reconfiguration to remove the northern parking space row, accommodate a designated vehicle lane for drop-off and pick-up activities on site, and avoid adverse effects on Des Plaines River Road. Note that the existing parking area is not setback a minimum of 3.5 feet from the property line as required in Section 12-9-6.D of the Zoning Ordinance. While the location of this parking area will not change, the proposed alterations require the parking area to conform with the setback requirement. Since the proposal does not include adjustments to meet this requirement, a variation is required.

Landscaping and Screening

The existing site contains some natural vegetation (1655 S. Des Plaines River Road) and some landscape improvements in the middle of the parking area on 1695 S. Des Plaines River Road but does not meet the specific requirements in Section 12-10, "Landscaping and Screening", of the Zoning Ordinance. The proposal does include new perimeter parking lot landscaping along the south portion of the parking area as noted in the attached Landscape Plan. However, the proposed improvements do not fully meet the interior and perimeter parking lot landscaping requirements in Section 12-10-8, requiring major variations.

The subject property abuts the Cook County Forest Preserve district to its south, which is a residentially zoned lot and requires conformance with the Landscape Buffer requirements in Section 12-10-9. An I-1-zoned property abutting a residential district or use must provide a minimum five-foot-wide landscape buffer containing shade trees planted every 30 feet, a solid eight-foot-tall fence, and turf or other ground cover along 100 percent of the property boundaries that abuts the residential district. While the landscape plan does provide some new landscaping along this property line, it does not fully satisfy this requirement, necessitating a major variation.

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Business Operations

The Project Narrative describes how the private school and childcare center uses will operate on site. Both uses will operate from 8 a.m. to 3 p.m. on weeks days (with before and after care on each weekday from 7-8 a.m. and 3-6 p.m.) and will be closed on weekends with the exception of occasional open houses throughout the year. The petitioner employs staggered drop-off and pick-up times in order to manage traffic flows and circulation on site during hours of operation for both uses as noted in the Traffic Impact Study.

MAJOR VARIATIONS

The proposal includes several variation requests related to the parking lot structure and multiple landscape requirements. The petitioner has provided a description of the hardships on the existing site and the necessity of the variation requests in the Petitioner's Responses to Standards. The City Council shall review each variation request and make a final determination based on its findings.

The PZB held a public hearing on May 14, 2024 to consider the requests. The PZB consolidated their determination for all requests into one motion voting 5-0 to recommend that City Council approve the requests with the three staff recommended conditions. The rationale for the PZB's vote is captured in the minutes from the May 14, 2024 PZB Meeting.

Pursuant to Sections 12-3-4.D.4, 12-3-6.G.2.c, and 12-3-7.D.4 of the Zoning Ordinance, the Council has the final authority on the Map Amendment, Conditional Use, and Major Variation requests. The Council may approve, approve with modifications, or deny Ordinance Z-9-24, which includes the requested entitlements for the proposed private school and childcare center development. If the City Council decides to approve these requests, staff and the PZB recommend the following conditions.

- 1. All proposed improvements and modifications shall be in full compliance with all applicable codes and ordinances. Drawings may have to be modified to comply with current codes and ordinances.
- 2. The petitioner shall submit a request to consolidate the subject properties in conformance with Title 13, "Subdivision Regulations" of the Municipal Code. The zoning entitlements will not be effective until the approval and recording of the consolidation plat for the subject properties.
- 3. The appropriate plans related to flood control improvements to the subject properties shall comply with the FEMA and Title 14, "Flood Control", requirements. All flood control improvements shall be approved by both FEMA and the PWE department and be installed on site prior to the issuance of a certificate of occupancy.

Moved by Walsten, seconded by Lysakowski, to Approve First Reading of Ordinance Z-9-24, AN ORDINANCE APPROVING A MAP AMENDMENT, CONDITIONAL USE AND MAJOR VARIATIONS FOR 1655 AND 1695 S. DES PLAINES RIVER ROAD, DES PLAINES, IL (CASE# 24-016-MAP-CU-V). Upon voice vote, the vote was: AYES: 8 - Lysakowski, Moylan, Oskerka, Savad,

8 - Lysakowski, Moylan, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz:

NAYS:0 -NoneABSENT:0 -NoneMotion declared carried.

Moved by Walsten to advance to second reading, seconded by Oskerka, to Adopt Ordinance Z-9-24, AN ORDINANCE APPROVING A MAP AMENDMENT, CONDITIONAL USE AND MAJOR VARIATIONS FOR 1655 AND 1695 S. DES PLAINES RIVER ROAD, DES PLAINES, IL (CASE# 24-016-MAP-CU-V). Upon roll call, the vote was: Lysakowski, Oskerka, AYES: 8 -Moylan, Sayad, Brookman, Walsten, Smith, Charewicz; NAYS: 0 -None 0 -None ABSENT: Motion declared carried.

Director of Community & Economic Development Rogers reviewed a memorandum dated June 3, 2024.

The petitioner, Urszula Topolewicz, 2020 Berry Lane, Des Plaines, IL 60018, is requesting the following items: (i.) a Conditional Use amendment under Section 12-7-3(K) of the City of Des Plaines Municipal Code to allow a trade contractor use with outdoor display and storage; and (ii.) a conditional use for a motor vehicle sales use within existing tenant spaces in an existing multi-tenant building upon the subject property in the C-3 General Commercial zoning district.

The subject property was annexed into the City in 1965. A conditional use was approved in 2021 via Ordinance Z-36-21 to permit a trade contractor use at this address. A subsequent amendment to the conditional use was approved in 2022 via Ordinance Z-26-22 and a zoning variation for signage was approved via Ordinance Z-27-22. The applicant has been working with the City to resolve several outstanding issues associated with the expiration of the 2022 conditional use ordinance as well as several minor code violations. This application is part of the resolution.

Conditional Use Amendment

The petitioner, Urszula Topolewicz, requests Conditional Use Permits to amend an existing trade contractor use and operate a proposed motor vehicle sales use in adjacent tenant spaces both at 1628 Rand Road. In accordance with the proposed motor vehicles sales use, the applicant would perform vehicle maintenance and detailing of vehicles offered for sale.

The case was published for consideration by the Planning & Zoning Board (PZB) at their regular meeting on January 23, 2024 but was continued to February 23, 2024 at which time the public hearing was opened. The PZB provided requests for improved accuracy among the exhibits provided and requested the applicant address several concerns relating to proposed operations and site plan design. The PZB subsequently continued the case to several subsequent meetings until April 23, 2024 at which time a quorum was not achieved. The case was renoticed for a public hearing on May 14, 2024. The PZB considered the applicant's revised plans and materials during the public hearing and recommended approval *by a 5-0 vote* of the applicant's request with several conditions.

Pursuant to Sections 12-3-4.D.4 and 12-3-7.D.4 of the Zoning Ordinance, the City Council may vote to approve, approve with modifications, or deny the request. The Council has final authority over the conditional use. Draft ordinance, Z-10-24, would approve an amendment to the Conditional Use. Should the City Council vote to approve the request, the PZB recommends the following conditions be included.

- 1. The petitioner shall implement all site improvements shown on the proposed undated site plan and any amendments required by the Planning & Zoning Board.
- 2. The applicant shall provide plans and specifications for review and secure permits for all site work governed by city codes and ordinances (pavement, exterior doors/window systems, mechanical/electrical/plumbing/structural, civil

CONSIDER AMENDING EXISTING C.U.TO ALLOW MOTOR VEHICLE SALES AND A TRADE CONTRACTOR USE/1628 RAND ROAD

ORDINANCE Z-10-24 engineering, etc.). All proposed improvements and modifications shall be in full compliance with all applicable codes and ordinances.

- 3. No materials shall be stored outside of the extents of the proposed privacy fence enclosure.
- 4. All outdoor storage and/or displays shall be permissible only in full compliance with the requirements of Title 14 of the Municipal Code including raising of stored materials above the base flood elevation (BFE).
- 5. Display and storage of vehicles or materials shall be permissible in designated areas on private property only and shall not be permissible within required drive aisles or customer parking stalls, or within the public right-of-way. All motor vehicles stored on the site must be operable and stored on a dust-free, hard surface.
- 6. The applicant shall coordinate with the City regarding the assignment of unique unit addresses for the two tenant spaces comprising the existing building upon the property.
- 7. No more than sixteen (16) motor vehicles may be displayed for sale on the Subject Property at one time. Through signs, striping, or combination, these sixteen (16) spaces should be identified and reserved. Adding additional motor vehicle sales spaces would require an amendment to the Conditional Use Permits. Sufficient parking spaces to meet the minimum off-street parking requirements for the Proposed Uses must be provided on the Subject Property at all times.
- 8. Deliveries of vehicles by flatbed truck shall be scheduled during business hours and area within the extents of the storage area shall be maintained free from obstructions to facilitate three-point turnarounds for trucks so that no reversing into Rand Road will occur.

The representative for the petitioner answered questions from Aldermen.

Moved by Lysakowski, seconded by Walsten, to Approve First Reading of Ordinance Z-10-24, AN ORDINANCE GRANTING AN AMENDMENT TO AN EXISTING CONDISITONAL USE PERMIT TO ALLOW MOTOR VEHICLE SALES AND A TRADE CONTRACTOR USE LOCATED AT 1628 RAND ROAD, DES PLAINES, IL. Upon voice vote, the vote was:

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, Charewicz;NAYS:0 -NoneABSENT:0 -NoneMotion declared carried.Value

<u>PUBLIC WORKS</u> – Alderman Charewicz, Chair

DISCUSSION OF LEAD SERVICE LINE REPLACEMENT PLAN

Assistant Director of Public Works and Engineering Timothy Watkins explained both the Environmental Protection Agency (EPA) and the Illinois Environmental Protection Agency (IEPA) have mandated that all community water supplies submit a final Lead Line Replacement Plan by April 15, 2027. Additionally, in connection with the plan, both agencies have mandated that community water supplies must start replacing lead/galvanized service lines regardless of who owns the water service line.

Since 2022, water systems are no longer permitted to replace only the right-of-way portion of lead/galvanized service lines in connection with water main replacement work and services affected by water main breaks. Rather, the entire lead/service line must be replaced from the water main to the water meter. The IEPA places this responsibility on the water system, regardless of ownership. Accordingly, the City has paid for these full lead/galvanized service line replacements.

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However, City Code Section 9-1-3.M, Water Service Line Maintenance, states "The property owner shall be responsible for the maintenance, repair and replacement of the water service line from the buffalo box or shutoff valve, including the connection thereto, up to the structure serviced by that water line. The city shall be responsible for the maintenance, repair and replacement of the water service line from the buffalo box or shutoff valve to the point of connection to the city water main." Based on the current ordinance, property owners would be responsible for replacing their portion of the water service line (b-box to water meter).

Based on the results of a survey conducted by the Northwest Municipal Conference many surrounding municipalities have some type of cost sharing program with the property owners, while a few communities cover the entire cost.

The City is also required to notify all affected property owners with lead/galvanized water service lines, and service lines where the material is unknown, by September 30, 2024 with the following information:

"The notice must include a statement that the person's service line is lead, galvanized or suspected lead, an explanation of the health effects of lead that meets the requirements of paragraph (a)(1)(ii) of 40 CFR 141.85, steps persons at the service connection can take to reduce exposure to lead in drinking water, information about opportunities to replace lead/galvanized service lines as well as programs that provide financing solutions to assist property owners with replacement of their portion of a lead service line, and a statement that the water system is required to replace its portion of a lead service line when the property owner notifies them they are replacing their portion of the lead service line."

Based on the number of known lead/galvanized service lines 1,363 and the number of unknown service lines 4,916, Des Plaines would have to replace up to a total of 6,279 over 20 years. The current average cost to replace a water service line is \$21,500. The total project cost at today's rate is \$134,998,500. If the City were to pay for the entire project, the annual cost would be \$6,749,925. This does not include annual increases in labor, equipment, and materials.

The Public Works and Engineering Department is requesting that the City Council adopt one of the following options to include in the required letter notification to affected property owners in order for the City to maintain compliance with the IEPA.

- 1. Approve a resolution at a future meeting that requires property owners that have lead/galvanized water service lines to pay their fair share of the customer owned portion of the service line. This could include payment plan options and default remedies for the City.
- 2. Approve a resolution at a future meeting that requires property owners that have lead/galvanized water service lines to pay 50% of the cost of the customer owned portion of the service line and the City would pay for the other 50% of the cost. This could include payment plan options and default remedies for the City.
- 3. Approve a resolution at a future meeting stating that the City would pay for the entire cost of the customer owned portion of the service line.

It should be noted that if a property owner refuses to participate in the replacement program, they will be required to sign a waiver to that effect and their lead/galvanized water service line will not be replaced. Also, Options 1 and 2 will require additional administrative staff to manage any payment programs. Further, the annual project budget would still be \$6.7 million as the City will have to cover the upfront cost of the project.

City Manager Wisniewski recommended that if there is consideration from the City Council to cover the cost of the replacement, during the budget process gaming tax revenue will be allocated toward this project. Another option is to seek State and Federal funds.

Alderman Brookman suggested that the city should cover the cost of the replacement and possibly enact a specific fund.

Mayor Goczkowski announced that while grant funds are available the amount of the funds are low compared to the cost to each community.

The consensus of the aldermen was to direct staff to create a plan where the project will be funded entirely by the city.

This item will be brought back to the City Council.

LEGAL & LICENSING - Alderman Brookman, Chair

The City Council heard testimony and discussed the proposed ordinance at their regular meetings on April 1, 2024, and April 15, 2024. At the conclusion of public comment and consideration during their regular meeting on April 15, 2024, the City Council approved Ordinance M-8-24 as amended by a 6-1 vote. The City Council's amendment to the draft ordinance struck the proposed prohibition of kratom and instead limited the new prohibition to only the sale of illicit THC products, and maintaining kratom as a product that could be legally sold throughout the city.

There has been a proliferation of retail stores in the City and surrounding communities offering unregulated and untested products derived from industrial hemp as well as a separate botanical ingredient called Kratom. These products are touted as alternatives to cannabis that produce similar intoxicating effects, but are not regulated, inspected, or taxed in the same manner as legal cannabis.

Although there have been various legislative proposals at both the state and federal levels, there is no general prohibition on production or sale of these unregulated THC products, although many municipalities have recently imposed local bans on these products. City staff has observed a number of retail businesses throughout the city offering these products, as well as products derived from kratom, a botanical substance from Southeast Asia. Some of these businesses appear similar to licensed cannabis dispensaries and consumer confusion is likely. City staff has determined that the sale of unregulated THC products and kratom in the City is not beneficial to the City or its residents. These products are not tested for pesticides or other adulterating substances, are not measured for potency, and are not subject to the state and local taxes imposed on legal cannabis. The sale of these products does not benefit the health, safety or welfare of the City's residents or the City as a whole.

Moved by Alderman Sayad, to amend ordinance M-8-24 to reinsert all of the provisions regarding kratom and the sale of kratom in the city will be prohibited, seconded by Smith to amend Title 5 of the City Code to prohibit the sale of "Illicit THC Products" and/or kratom. Upon roll call vote, the vote was:

AYES: 6 - Moylan, Oskerka, Sayad, Brookman, Smith, Charewicz;

NAYS: 2 - Lysakowski, Walsten

ABSENT: 0 - None

Motion declared carried.

RECONSIDER ORDINANCE M-8-24/ AMENDMENTS TO TITLE 5 OF THE CITY CODE TO PROHIBIT THE SALE OF ILLICIT THC PRODUCTS

		0,00,202
<u>CONSIDER</u> <u>AMENDING THE</u> <u>CITY CODE TO</u> ADDRESS	The Illinois Department of Revenue (IDOR) has requested amendment Des Plaines Code of Ordinances to better align local regulations with requirements relating to the collection of a Municipal Cannabis Retailer's	h State of Illinois
TECHNICAL ISSUES RAISED BY IDOR ORDINANCE M-10-24	The Illinois General Assembly adopted the Cannabis Regulation and Ta 101-0027 (the "Act"), which legalized the possession, use, cultivation, to sale of recreational cannabis beginning January 1, 2020. The Ac municipalities to enact a municipal tax on the retail sale of cannabis for recreation of the persons over the age of 21. In December 2019, the City of Des Pla	transportation, and t also authorized creational purposes
	adopted Ordinance Z-31-19 establishing regulations relating to the operation cannabis dispensaries. In January 2020, the City Council adopted Orestablishing a three percent (3.0%) tax on gross receipts of all sales of can retailers within the City of Des Plaines.	tion of recreational rdinance M-52-19
	At this time, potential revenues from a municipal sales tax upon cannab estimated since there are presently no cannabis business establishments Des Plaines.	
	Moved by Alderman Walsten, seconded by Alderman Sayad to appro- ordinance M-10-24, AN ORDINANCE AMENDING CHAPTER 13 O CITY CODE REGARDING THE CITY'S MUNICIPAL CANNAE OCCUPATION TAX. Upon voice vote, the vote was: AYES: 8 - Lysakowski, Moylan, Oskerka, Sayad, Brookman, Walsten, Smith, Charewicz;	F TITLE 15 THE
	NAYS: 0 - None ABSENT: 0 - None Motion declared carried.	
	Moved by Alderman Brookman, seconded by Alderman Sayad to advance and adopt ordinance M-10-24, AN ORDINANCE AMENDING CHAPT 15 THE CITY CODE REGARDING THE CITY'S MUNICIP RETAILER'S OCCUPATION TAX. Upon roll call, the vote was:	TER 13 OF TITLE

AYES:8 -Lysakowski, Moylan, Oskerka, Sayad,
Brookman, Walsten, Smith, Charewicz;NAYS:0 -NoneABSENT:0 -NoneMotion declared carried.Variable

ADJOURNMENT The meeting adjourned at 8:35 p.m.

Laura Fast – DEPUTY CITY CLERK

APPROVED BY ME THIS _____

DAY OF _____, 2024

Andrew Goczkowski, MAYOR

APPOINTMENT



OFFICE OF THE MAYOR

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5301 desplaines.org

MEMORANDUM

Date: June 10, 2024

To: Aldermen of the City Council

From: Mayor Andrew Goczkowski

Subject: Appointment to Planning & Zoning Board

I wish to appoint Dominik Bronakowski to the Planning & Zoning Board. This will be on the June 17, 2024 City Council Agenda for your consideration.

<u>Appointment</u>

Planning & Zoning BoardTerm to ExpireDominik Bronakowski7/15/2027

Attachment: Bronakowski, Dominik - Resume

DOMINIK BRONAKOWSKI

PROFESSIONAL SUMMARY

Dominik is a Polish speaking, and dynamic Outreach Director with a proven track record of legislative analysis, stakeholder engagement, and constituent service. Skilled in coordinating community events, managing social media, and supervising interns, he is an effective liaison between government entities and community organizations, dedicated to enhancing constituent representation and engagement.

PROFESSIONAL EXPERIENCE

Outreach Director

- Tracked and analyzed legislation, preparing summaries and policy memos for direct floor vote decisions.
- Developed and maintained strong relationships with district stakeholders, coordinating community events to enhance constituent engagement.
- Acted as a liaison between the district and community organizations, ensuring strong government partnerships.
- Managed a high volume of constituent casework, collaborating with state agencies to resolve issues promptly.
- Produced and distributed monthly newsletters using MailChimp, and handled all government social media pages.
- Updated and maintained the constituent database using SmartVAN.
- Supervised a team of up to 6 office interns.

Campaign Field Organizer

Various Political Campaigns

Supported various campaigns on the municipal level, with most recently supporting <u>State Senator Laura Murphy's</u> reelection campaign and <u>State Senator Robert Martwick/State Representative Lindsey LaPointe's</u> community outreach initiative,.

- Developed and implemented a comprehensive grassroots outreach plan to connect with voters at the local level, including door-to-door canvassing and coordinating community events.
- Engaged with voters to identify key issues and concerns, communicate the candidate's message, and persuade undecided voters to support the campaign.
- Worked collaboratively with coalition partners, local organizations, and community leaders to expand the campaign's reach and build strategic alliances.
- Helped coordinate campaign events to fundraise and promote candidates' missions.

Talent Acquisition Partner

Right At School

- Operated a high-volume desk, supporting over 150 school locations by screening an average of 60 candidates a week for various part and full time roles.
- Managed 25 different hiring managers schedules, ensuring efficient time management and effective timelines, while providing labor relations, compensation, and recruitment strategies.
- Created various recruitment outreach media, ranging from infographics, to flyers and various recruitment videos
- Created new hire videos, welcome packets, and training guides to ensure seamless transition into the organization.
- Successfully hired, and placed over ~ 350 full and part time staff within the first year of employment.

Technical Recruiter

Addison Group

- Prospected passive candidates through the utilization of Linked Recruiter, Indeed, Zip Recruiter, and Bullhorn to fill "tough to hire" roles within Tech and Digital Marketing.
- Nurtured a robust candidate pipeline while cultivating and fostering strong candidate relationships.
- Screened, assessed, and evaluated technical candidates for diverse positions within Tech and Digital Marketing.
- Negotiated complex compensation structures and successfully closed deals aligning with company objectives.

Recreation Facilities Manager

Des Plaines Park District

- Directed the daily operations and scheduling of up to four distinct facilities, ensuring efficient workflows and optimal resource allocation.
- Provided supervision for a workforce of 200+ employees, encompassing both full and part-time staff..
- Conducted new hire orientation sessions, ensuring seamless assimilation into the organization and promoting a positive onboarding experience.
- Ran weekly/monthly work/HR related training for staff in both field and classroom settings.

EDUCATION & SKILLS

Bachelors of Science, Human and Educational Services

General Education Course Work

Skills: Bilingual in Polish, Votebuilder, Cutting Campaign Turfs, Phonebanking, Community Outreach, Event Planning/Execution, Campaign Strategy, Volunteer Coordination, Grassroots Organizing, Employee Relations, HR Policy Development, Performance Management, Employee Onboarding, Candidate Sourcing, and Interviewing/Assessment.

VOLUNTEER

State Outreach Coordinator

Young Democrats of Illinois

- Connected with volunteers state wide to connect them with local grassroot leaders in their communities to assist with reelections, fundraisers, phone banking, and special projects needed by the elected official.
- Organized and ran statewide volunteer connection days to provide YDI's orientations to prospective volunteers.
- Managed the organization's outreach inbox and forwarded applicable emails to respective stakeholders.

Member at Large

Maine Township Regular Democratic Organization

- Met monthly with local township leaders to discuss current events and effects of the political landscape.
- Assisted with GOTV campaigns, and petition drives to help get local leaders back on the ballot.

References

- Lindsey LaPointe
 - Illinois State Representative (D) 19th District
- Daniel "Pogo" Pogorzelski
 - Commissioner of the Metropolitan Water Reclamation District of Greater Chicago
- Annie Kotowski
 - State Senator Laura Murphy's Petition Coordinator:

PLAINES ILLINOIS

FINANCE DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5300 desplaines.org

MEMORANDUM

Date: June 5, 2024

To: Dorothy Wisniewski, City Manager

From: Agnes Podbial, Acting Director of Finance

Subject: Resolution R-118-24, June 17, 2024, Warrant Register

Recommendation: I recommend that the City Council approve the June 17, 2024 Warrant Register Resolution R-118-24.

Warrant Register.....\$3,108,111.96

Estimated General Fund Balance

Balance as of 03/31/2024: <u>\$26,529,613</u> Please use caution when evaluating this number as revenues fluctuate dramatically from month to month due to delays in receiving sales tax revenue from the State and $1^{st} \& 2^{nd}$ installments of property tax revenue.

CITY OF DES PLAINES

RESOLUTION

R-118-24

Be it resolved by the City Council of the City of Des Plaines that the following bills are due and payable and that the Mayor and City Clerk be and are hereby authorized <u>to make payment for same.</u>

June 17, 2024

Line #	Account		Vendor	Invoice	Invoice Description	Amount
			Fund: 10	0 - General Fund		
1	2478	DUI Fines	1518 Intoximeters Inc	760490	Dry Gas Canister and 200 Mouthpieces for Intoximeter	254.75
			Ele	cted Office		
Division	110 - Leg	gislative				
2	5310	Membership Dues	1268 Northwest Municipal Conference	11065	2024-25 Northwest Municipal Conf Membership Dues R-100-24	25,528.00
3	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	385.61
4	6110	Printing Services	1233 Press Tech Inc	52777	1 Box of Business Cards 05/20/2024	30.00
Total 11	LO - Legisla	tive	1		-	25,943.61

Division	: 120 - Cit	y Clerk				
5	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	42.29
6	6195	Miscellaneous Contractual Services	1077 Shred-It USA LLC	8007079857	Shredding Services for 04/05-05/01/2024	99.04
7	6300	R&M Software	8843 Granicus LLC	183870	FOIA Public Records Software June 1, 2024- May 31, 2025	7,338.81
Total 12	20 - City Cl	lerk				7,480.14

Total 10 - Elected Office

			City A	dministration		
Divisio	n: 210 - C	ity Manager				
8	6005	Legal Fees	8133 Elrod Friedman LLP	17368	4-24 Non-Retainer Matters	474.00
9	6005	Legal Fees	8133 Elrod Friedman LLP	17376	4-24 Non-Retainer Matters	671.50
10	6005	Legal Fees	8133 Elrod Friedman LLP	17383	4-24 Non-Retainer Matters	160.00
11	6005	Legal Fees	8133 Elrod Friedman LLP	17651	4-24 Non-Retainer Matters	1,083.41
12	6005	Legal Fees	8133 Elrod Friedman LLP	APR 2024 RET	April 2024 Retainer	19,500.00
13	6009	Legal Fees - Admin Hearings/Prosecutions	8958 Robbins DiMonte Ltd	264644	Legal Fees April 2024	7,363.75
14	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	15.25
Total 2	10 - City I	 Vanager		1		29,267.91

Division	: 230 - In	formation Technology				
15	6000	Professional Services	9081 Convergint Technologies LLC	IN00192324	Civic Deck Call Boxes Setup & Trip Charge 05/07/2024	1,285.00
16	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	339.50
17	6105	Records Preservation	1370 Microsystems Inc	088469	Warrant Scanning 05/13-05/17/2024	348.40
18	6140	Leases	5109 Konica Minolta Premier Finance	5030036886	Konica Minolta (Year 1 of 3) R-176-23 June 2024	8,109.66
19	6300	R&M Software	5068 IT Savvy LLC	01497163	R&M Software - Cisco Smartnet 05/14/24- 05/13/25	236.01

33,423.75

Line #	Account		Vendor	Invoice	Invoice Description	Amount
20	6300	R&M Software	5068 IT Savvy LLC	01498908	R&M Software - Cisco Smartnet 05/21/24- 05/20/25	236.01
21	6300	R&M Software	1370 Microsystems Inc	088444	Bluelake Annual Software Maintenance 05/15/2024-05/14/2025	216.00
22	6305	R&M Equipment	2664 Speedlink Solutions Inc	709641	Barracuda Email Protection Yr-3 of 3 07/28/24-07/28/25 R-151-23	36,950.00
23	6305	R&M Equipment	2664 Speedlink Solutions Inc	709645	Barracuda Backup Server Contract Renewal R-70-23 6/17/23-7/30/25	62,835.80
24	8005	Computer Hardware	5068 IT Savvy LLC	01496928	Cisco Switches for Firewalls	2,026.62
25	8005	Computer Hardware	5068 IT Savvy LLC	01498414	Cisco Switches for Firewalls	2,026.62
otal 23	0 - Inform	ation Technology				114,609.62

Divisior	n: 240 - N	ledia Services				
26	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	247.46
27	6195	Miscellaneous Contractual Services	8852 CivicPlus LLC	298727	Annual Fee for Social Media Archiving 06/01/24-05/31/25	7,188.00
28	7200	Other Supplies	2016 Signarama	44689	Nametag for Econ Dev Mgr	18.00
Total 24	Total 240 - Media Services					

20	5340			20240404755		20.21
29	5340	Pre-Employment Testing	1320 IL State Police	20240401755	Fingerprint Background Check Services April 2024	28.25
30	6000	Professional Services	9079 ClearCompany LLC	40539	Appl Tracking, Onboarding & Emp Performance Mgmt 5/8/24-5/8/25 R-95-24	43,543.00
31	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	89.58
32	6105	Records Preservation	1370 Microsystems Inc	088468	Termed Personnel File Scanning 05/09/2024	1,032.90
33	6195	Miscellaneous Contractual Services	1077 Shred-It USA LLC	8007079857	Shredding Services for 04/05-05/01/2024	99.04
otal 2	50 - Hum	an Resources				44,792.77

Total 20 - City Administration

Departr	Department: 30 - Finance								
34	6000	Professional Services	5934 Tyler Technologies Inc	045-466309	Finalize Bank Changeover-3 Hours 04/29/2024	585.00			
35	6000	Professional Services	2071 Lauterbach & Amen, LLP	91117	Tax Levy - Firefighters' Pension For Fiscal Year 12/31/2023	2,890.00			
36	6000	Professional Services	2071 Lauterbach & Amen, LLP	91118	Actuarial Proj-Fire/Police Pension Funds fm FY2023 to 2040/2050	3,000.00			
37	6000	Professional Services	2071 Lauterbach & Amen, LLP	91138	Tax Levy - Police Pension For Fiscal Year 12/31/2023	2,890.00			

196,123.76

Line #	Account		Vendor	Invoice	Invoice Description	Amount
38	6000	Professional Services	2943 Crowe LLP	CI-81081	Auditing Services for Tax Year 2023 (2nd of	29,000.00
					3 Years) R-144-22	
39	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	101.94
40	6195	Miscellaneous Contractual Services	1077 Shred-It USA LLC	8007079857	Shredding Services for 04/05-05/01/2024	99.05
41	7000	Office Supplies	1644 Warehouse Direct Inc	5725613-0	4 Cartons of Copy Paper	122.20
Total 30	- Finance					38,688.19

			Commu	nity Development		
Divisio	n: 410 - B	uilding & Code Enforcement	t			
42	6000	Professional Services	3337 HR Green Inc	174938	April 2024 Plan Review Services	1,257.60
43	6000	Professional Services	4210 Lakota Group, The	24003-02	Oakton Corridor Action Plan Consulting Services 3/1/24-4/30/24	905.30
44	6000	Professional Services	6315 B&F Construction Code Services Inc	64687	Plan Review 05/17/24 Project# 1130985	225.00
45	6000	Professional Services	6315 B&F Construction Code Services Inc	64689	Plan Reviews 05/17/24 Project# 1130963	225.00
46	6000	Professional Services	6315 B&F Construction Code Services Inc	64744	Plan Review 05/22/24 Project# 1131020	225.00
47	6000	Professional Services	6315 B&F Construction Code Services Inc	64745	Plan Review 05/22/24 Project# 1131017	225.00
48	6000	Professional Services	6315 B&F Construction Code Services Inc	64757	Plan Review 05/23/24 Project #1131023	225.00
49	6000	Professional Services	6315 B&F Construction Code Services Inc	64780	Plan Reviews 05/24/24 Project # 1131022	225.00
50	6005	Legal Fees	8133 Elrod Friedman LLP	17375	4-24 Non-Retainer Matters	4,213.50
51	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	710.98
52	6025	Administrative Services	7961 BridgePay Network Solutions LLC	59249	Utility Web, Business License Trans & EnerGov Fees April 2024	0.80
53	6025	Administrative Services	7961 BridgePay Network Solutions LLC	59249	Utility Web, Business License Trans & EnerGov Fees April 2024	47.20
Total 4	10 - Build	ling & Code Enforcement	1	I	- 1	8,485.38

Division	: 420 - Pla	nning & Zoning				
54	6005	Legal Fees	8133 Elrod Friedman LLP	17365	4-24 Non-Retainer Matters	1,408.00
55	6005	Legal Fees	8133 Elrod Friedman LLP	17385*	4-24 Non-Retainer Matters	64.00
56	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	78.30
57	7000	Office Supplies	1644 Warehouse Direct Inc	5722113-0	Post It Notes	28.66
Total 42	Total 420 - Planning & Zoning					

Division	Division: 430 - Economic Development							
58	6000	Professional Services	5215 CoStar Realty	120671690	April 2024 Available Property Database	502.21		
			Information Inc					
59	6000	Professional Services	5215 CoStar Realty	120774290	May 2024 Available Property Database	524.81		
			Information Inc					

Line #	Account		Vendor	Invoice	Invoice Description	Amount
60	6005	Legal Fees	8133 Elrod Friedman LLP	17372	4-24 Non-Retainer Matters	1,088.00
61	6005	Legal Fees	8133 Elrod Friedman LLP	17373	4-24 Non-Retainer Matters	288.00
62	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	42.29
fotal 43	80 - Econo	l mic Development				2,445.31

Total 40 - Community Development

12,509.65

			Public V	Vorks & Engineering	g	
Division	: 100 - Ad	Iministration				
63	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	80.02
64	6300	R&M Software	8974 Ritter GIS Incorporated	21794	TO#1 Implement Cityworks Software - 04/11-05/10/2024, R-195-23	21,340.00
Total 10	0 - Admir	nistration	8	•	•	21,420.02

Division	Division: 510 - Engineering							
65	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	167.88		
Total 51	0 - Engine	ering				167.88		

Divisio	n: 530 - S	treet Maintenance				
66	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	283.80
67	6170	Tree Maintenance	6555 Landscape Concepts Management Inc	46253	Tree Removal - 04/02/2024, R-153-23	17,413.00
68	6170	Tree Maintenance	6555 Landscape Concepts Management Inc	46254	Branch Pick Up - 60016 - 05/06/2024, R- 153-23	11,008.00
69	6170	Tree Maintenance	6555 Landscape Concepts Management Inc	46255	Tree Trimming - 239 S Radcliffe - 05/21/2024, R-153-23	2,279.00
70	6175	Tree Plantings	1347 Lurvey Landscape Supply	T1-10527451	Maple Tree - Spring Tree Planting 05/15/2024	275.00
71	6175	Tree Plantings	1347 Lurvey Landscape Supply	T1-10527708	Shawnee Brave Bald Cypress - Tree Planting - 05/16/2024	395.00
72	6175	Tree Plantings	1347 Lurvey Landscape Supply	T1-10527757	Kentucky Coffee Tree - Tree Planting - 05/16/2024	295.00
73	6195	Miscellaneous Contractual Services	5399 Beary Landscape Management	284710	Restoration, Grade, Seed - 05/11/2024	2,055.00
74	6195	Miscellaneous Contractual Services	5399 Beary Landscape Management	284711	Resod Parkway - 391 Simone - 05/11/2024	1,190.00
75	6195	Miscellaneous Contractual Services	5399 Beary Landscape Management	284714	Clean Up & Edge - Wicke & Walnut - 04/30/2024, R-5-24	180.00
76	6325	R&M Street Lights	1044 H&H Electric Co	43544	Traffic Signal Controller Replace - River/Algonquin - 02/28/2024	9,451.82
77	7020	Supplies - Safety	1520 Russo Power Equipment	SPI20657073	Ear Protection, Eye Shield, Reflectors, Etc.	146.97

Line #	Account		Vordor			Amount
Line # 78	7030	Supplies - Tools &	Vendor 8244 Des Plaines Ace	Invoice 5823	Invoice Description 4 Fasteners	Amount 7.56
10	7030	Hardware	Hardware	J023	+ 1 031511513	7.50
79	7030	Supplies - Tools &	1520 Russo Power	SPI20657073	Ear Protection, Eye Shield, Reflectors, Etc.	261.72
		Hardware	Equipment		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,, _,	
80	7035	Supplies - Equipment	4640 Albany Steel & Brass	162501	Grinding Heads & Pizza Segments	2,105.76
		R&M	Corporation			,
81	7050	Supplies - Streetscape	1437 Des Plaines Material &	579539	3.0 Cu Yds Top Soil - Restorations -	120.00
			Supply LLC		05/15/2023	
82	7050	Supplies - Streetscape	1347 Lurvey Landscape	T1-10527324	3.0 Cu Yds Top Soil - Tree Planting -	96.00
			Supply		05/15/2024	
83	7050	Supplies - Streetscape	1347 Lurvey Landscape	T1-10527341	Returned 3.0 Cu Yds Top Soil - 05/15/2024	(96.00)
			Supply			
84	7050	Supplies - Streetscape	1347 Lurvey Landscape	T1-10527381	Erosion Blankets - Tree Planting -	129.00
			Supply		05/15/2024	
85	7050	Supplies - Streetscape	1347 Lurvey Landscape	T1-10527439	Staples - Tree Planting	39.00
			Supply			
86	7050	Supplies - Streetscape	1347 Lurvey Landscape	T1-10528091	2.0 Cu Yds Top Soil - Tree Planting -	64.00
			Supply		05/17/2024	
87	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	133067	11.01 Tons of Cold Patch - 02/09/2024	1,816.65
88	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	133081	2.5 Tons of Cold Patch - 02/13/2024	412.50
89	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134723	2.92 Tons Asphalt - 04/04/2024	192.72
90	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134741	2.02 Tons Asphalt - 04/05/2024	133.32
91	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134782	24.13 Tons Asphalt - 04/08/2024	1,592.58
92	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134813	24.03 Tons Asphalt - 04/09/2024	1,585.98
93	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134851	9.83 Tons Asphalt - 04/10/2024	648.78
94	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134915	3.74 Tons Asphalt - 04/12/2024	246.84
95	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	134980	2.99 Tons Asphalt - 04/15/2024	197.34
96	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135028	10.77 Tons Asphalt - 04/16/2024	710.82
97	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135063	2.06 Tons Asphalt - 04/17/2024	135.96
98	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135111	6.02 Tons Asphalt - 04/18/2024	397.32
99	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135156	18.24 Tons Asphalt - 04/19/2024	1,203.84
100	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135212	2.02 Tons Asphalt - 04/22/2024	133.32
101	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135257	18.63 Tons Asphalt - 04/23/2024	1,229.58
102	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135326	5.95 Tons Asphalt - 04/24/2024	392.70
103	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135383	4.51 Tons Asphalt - 04/25/2024	297.66
104	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135425	2.02 Tons Asphalt - 04/26/2024	133.32
105	7055	Supplies - Street R&M	7691 Builders Asphalt LLC	135495	11.09 Tons Asphalt - 04/30/2024	731.94
-						
106	7200	Other Supplies	4093 White Cap LP	10019951817	Rain Coat	70.99

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Line #	Account		Vendor	Invoice	Invoice Description	Amount
107	7200	Other Supplies	1057 Menard Incorporated	34824	4 Cases Bottled Water - Food Trucks	13.92
Total 53	Total 530 - Street Maintenance					

		acilities & Grounds Mainten		00000		
108	6000	Professional Services	2436 Haeger Engineering LLC	93000	TO#7 Feasibility Engineering - PW - 03/14- 03/22/2024, R-215-22	680.00
109	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	183.33
110	6145	Custodial Services	8073 Crystal Maintenance Services Corporation	31897	Custodial Services - 7 Buildings - June 2024, R-156-22	8,240.00
111	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249122	Pest Control - City Hall - 05/20/2024	60.00
112	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249124	Pest Control - Police Station - 05/20/2024	60.00
113	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249166	Pest Control - Metra Train Station - 05/20/2024	50.00
114	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249178	Pest Control - Fire Station #61 - 05/20/2024	50.00
115	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249213	Pest Control - Public Works - 05/20/2024	50.00
116	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249244	Pest Control - Fire Station #62 - 05/20/2024	50.00
117	6195	Miscellaneous Contractual Services	8826 Chem-Wise Pest Management	1249284	Pest Control - Fire Station #63 - 05/20/2024	50.00
118	6195	Miscellaneous Contractual Services	1029 Cintas Corporation	4192675568	Mat Service - Metra Train Station - 05/15/2024	39.51
119	6195	Miscellaneous Contractual Services	1029 Cintas Corporation	4192675569	Mat Service - Police Station - 05/15/2024	92.28
120	6195	Miscellaneous Contractual Services	1029 Cintas Corporation	4193404793	Mat Service - Metra Train Station - 05/22/2024	39.51
121	6315	R&M Buildings & Structures	1025 Bedco Inc	099821	Filters & Preventative Maintenance - PW - 05/13/2024	1,631.15
122	6315	R&M Buildings & Structures	1666 Des Plaines Glass Company	13041	Glass Repair - Metra Train Station - 05/20/2024	2,210.00
123	7025	Supplies - Custodial	1057 Menard Incorporated	34815	Fabuloso Cleaner - Metra Train Station	47.56
124	7025	Supplies - Custodial	1057 Menard Incorporated	35062	Window Glass Cleaner - City Hall	3.58
125	7025	Supplies - Custodial	1029 Cintas Corporation	4192675591	Cleaners, Paper Towels, Soap, Mat, Scrubs, Etc PW	198.56
126	7025	Supplies - Custodial	1029 Cintas Corporation	4193404759	Cleaners, Paper Towels, Soap, Mat, Scrubs, Etc PW	174.96

Line #	Account		Vendor	Invoice	Invoice Description	Amount
Line #		Supplies - Tools &				
127	7030	Hardware	1047 Home Depot Credit Svcs	0513469	Countertop, Saw Blade, Caulk, Pine Moulding	117.64
128	7035	Supplies - Equipment R&M	1047 Home Depot Credit Svcs	1522773	Power Tool Cord & Connector	35.02
129	7035	Supplies - Equipment R&M	1047 Home Depot Credit Svcs	6025371	Round Reducer & Saw Blade	71.25
130	7045	Supplies - Building R&M	1018 Anderson Lock Company LTD	1146725	Deadlatch - PW	14.70
131	7045	Supplies - Building R&M	1057 Menard Incorporated	34496	Conduit Clamp - City/PD Link	5.52
132	7045	Supplies - Building R&M	1057 Menard Incorporated	34509A	Stain, Paint Tray, Paint Roller, Stain Pad - City Hall Mailroom	35.52
133	7045	Supplies - Building R&M	1057 Menard Incorporated	34543	4 Toggle Switches - PW	21.96
134	7045	Supplies - Building R&M	1057 Menard Incorporated	34548	Wood Screws, Paint Tray, Wood Finish - City Hall	85.54
135	7045	Supplies - Building R&M	1057 Menard Incorporated	34569	Angle, Lock Nuts, Bolts, Threaded Rod - Fire Station #63	14.40
136	7045	Supplies - Building R&M	1057 Menard Incorporated	34574	Door Stop - City Hall	4.89
137	7045	Supplies - Building R&M	1057 Menard Incorporated	34610	Bushing, Nipples, Valves - PW Garage	34.33
138	7045	Supplies - Building R&M	1057 Menard Incorporated	34834	Main Line Cleaner, Valve Stem, Flood Guard, Etc City Hall	94.45
139	7045	Supplies - Building R&M	1057 Menard Incorporated	34888	Door Handle - PW	81.99
140	7045	Supplies - Building R&M	1057 Menard Incorporated	34959	Brackets & Shop Lights - PWB	71.96
141	7045	Supplies - Building R&M	1057 Menard Incorporated	34961	4 Foam Brushes - City Hall	2.96
142	7045	Supplies - Building R&M	1057 Menard Incorporated	34971	Shop Lights - PWB	79.98
143	7045	Supplies - Building R&M	1057 Menard Incorporated	35063	Dowel Kit & Jigsaw Blade - City Hall Room 101	20.45
144	7045	Supplies - Building R&M	1057 Menard Incorporated	35079	Power Cord & Under Cabinet Lights - City Hall Finance	122.96
145	7045	Supplies - Building R&M	8244 Des Plaines Ace Hardware	5842	Electric Cover Box - City Hall	4.49
146	7045	Supplies - Building R&M	1527 Sherwin-Williams Company, The	6126-7	Paint - City Hall 3rd Floor	23.99
147	7045	Supplies - Building R&M	2137 McMaster-Carr Supply Company	745498	9 Keyed Cam Locks, Washers, Master Keys - City Hall Council	135.00
148	7045	Supplies - Building R&M	1043 WW Grainger Inc	9125793936	2 Roof Fan Motors - PWB	211.72
149	7045	Supplies - Building R&M	4583 Argon Electric Company, Inc	9811	Fiber Cable - Police Station	1,993.00
150	7045	Supplies - Building R&M	1513 Owl Hardwood Lumber & Plywood Inc	D-570160	Plywood - City Hall Mail Room	719.68
151	7045	Supplies - Building R&M	2313 City Electric Supply Company (CES)	DEP/069994	PVC Elbows & Pipe Straps - City Hall	60.99

Line #	Account		Vendor	Invoice	Invoice Description	Amount
152	7140	Electricity	1033 ComEd	0824348000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
153	7140	Electricity	1033 ComEd	1119445000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
154	7140	Electricity	1033 ComEd	1685345000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
155	7140	Electricity	1033 ComEd	3011245000-	Electricity Service 04/09-05/08/2024	271.25
				05/24		
156	7140	Electricity	1033 ComEd	3107035000-	Electricity Service 04/09-05/08/2024	862.93
				05/24		
157	7140	Electricity	1033 ComEd	3329105000-	Electricity Service 04/09-05/08/2024	28.55
				05/24		
158	7140	Electricity	1033 ComEd	3508735000-	Electricity Service 04/09-05/08/2024	34.60
				05/24		
159	7140	Electricity	1033 ComEd	3983754111-	Electricity Service 04/17-05/16/2024	7,271.95
				05/24		
160	7140	Electricity	1033 ComEd	4441545000-	Electricity Service 04/09-05/08/2024	38.83
				05/24		
161	7140	Electricity	1033 ComEd	4572894000-	Electricity Service 04/09-05/08/2024	533.93
				05/24		
162	7140	Electricity	1033 ComEd	5423445000-	Electricity Service 04/09-05/08/2024	769.51
				05/24		
163	7140	Electricity	1033 ComEd	5469245000-	Electricity Service 04/09-05/08/2024	119.78
				05/24		
164	7140	Electricity	1033 ComEd	5481145000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
165	7140	Electricity	1033 ComEd	6037992222-	Electricity Service 04/09-05/08/2024	46.00
				05/24		
166	7140	Electricity	1033 ComEd	6162935000-	Electricity Service 04/09-05/08/2024	50.75
				05/24		
167	7140	Electricity	1033 ComEd	6675145000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
168	7140	Electricity	1033 ComEd	7212912000-	Electricity Service 04/09-05/08/2024	154.15
				05/24		
169	7140	Electricity	1033 ComEd	7701345000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
170	7140	Electricity	1033 ComEd	9377735000-	Electricity Service 04/09-05/08/2024	26.31
				05/24		
171	7140	Electricity	1033 ComEd	9855725000-	Electricity Service 04/09-05/08/2024	84.01
				05/24		
172	7145	Water/Sewer	1031 Des Plaines, City of	71110082-3	Utility Service - 1460 Miner - 03/31-	149.80
				04/24	04/29/2024	
173	7200	Other Supplies	1057 Menard Incorporated	34617	7 Cases Bottled Water - City Hall	24.36
474	7202	11				22.42
174	7300	Uniforms	2067 Cutler Workwear	PS-INV034413	2 Pairs Jeans - Quartermaster Uniforms	22.49
Total 52	E - Eacilia	ties & Grounds Mainte	nance	1	1	20 624 00
10101 35	J - Facili	lies & Grounus Mainte	וומוונכ			28,621.89

Division	Division: 540 - Vehicle Maintenance								
175	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	134.00			
176	6040	Waste Hauling & Debris Removal	2214 Liberty Tire Recycling	2738832	119 Tires Recycled - 05/15/2024	491.81			
177	6135	Rentals	1029 Cintas Corporation	4192767476	Mechanic's Uniform Rental - 05/15/2024	193.98			
178	6135	Rentals	1029 Cintas Corporation	4193409052	Mechanic's Uniform Rental - 05/22/2024	193.98			

Line #	Account		Vendor	Invoice	Invoice Description	Amount
179	6195	Miscellaneous Contractual Services	8481 Linde Gas & Equipment Inc	43018736	Cylinder Rental - 04/20-05/20/2024	1,182.99
180	6195	Miscellaneous Contractual Services	1660 Safety-Kleen Systems Inc	94338518	Solvent Tank Service - 05/08/2024	316.78
181	6310	R&M Vehicles	8938 James Drive Safety Lane LLC	1493	Safety Lane Inspection - PW April 2024	492.00
182	6310	R&M Vehicles	1089 Autokrafters of Des Plaines	1496	Body Repair - PW 20347 - 05/22/2024	2,072.47
183	7035	Supplies - Equipment R&M	4640 Albany Steel & Brass Corporation	162258	Shaft & Grinding Head - PW 5104	789.59
184	7035	Supplies - Equipment R&M	4640 Albany Steel & Brass Corporation	162428	Pulley Shaft - PW 5104	116.83
185	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	893779	Air Filters & Oil - PW 5PW4	217.84
186	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	894006	2 Filter Regulators - PW 5PW4	197.56
187	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	894023	Filters - PW 5033	226.06
188	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	894025	Oil Filter - PW 5033	20.71
189	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	894494	Parts Return & Core Deposit Returned - 5PW4 & Police 6084	(197.56)
190	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	894570	Air Filters & Regulators - PW 5PW4	188.68
191	7035	Supplies - Equipment R&M	8454 NAPA Auto Parts	895139	4 Spark Plugs - PW Stock	17.56
192	7040	Supplies - Vehicle R&M	1677 Wholesale Direct Inc	000269091	Auto Eject & Covers - Fire Stock	465.37
193	7040	Supplies - Vehicle R&M	1673 Chicago Parts & Sound LLC	1-0442463	Alternators, Filters, Brake Pads, Rotors, Etc. - Police Stock	1,792.56
194	7040	Supplies - Vehicle R&M	1045 Havey Communications	13254	Unitrol Controller - Police Stock	306.85
195	7040	Supplies - Vehicle R&M	1673 Chicago Parts & Sound LLC	1CR0077869	Core Credit - Police Stock	(150.00)
196	7040	Supplies - Vehicle R&M	3518 O'Reilly Auto Parts	2479-194698	A/C Compressor & Core - Police 6086	358.57
197	7040	Supplies - Vehicle R&M	1501 Foster Coach Sales Inc	27501	Door Handle - Fire 7707	284.78
198	7040	Supplies - Vehicle R&M	1071 Pomp's Tire Service Inc	280160959	6 Tires - Fire 7610	1,741.36
199	7040	Supplies - Vehicle R&M	4280 Rush Truck Centers of Illinois Inc	3037203967	30 Filters - Fire Stock	1,911.36
200	7040	Supplies - Vehicle R&M	6224 Bumper to Bumper	408-1376010	Brake Pads - Fire 7610	205.54
201	7040	Supplies - Vehicle R&M	1071 Pomp's Tire Service Inc	411103848	Steer Tire - Police 6901	261.82

			warrant neg			
Line #	Account	1	Vendor	Invoice	Invoice Description	Amount
202	7040	Supplies - Vehicle R&M	1071 Pomp's Tire Service Inc	411103850	4 Drive Tires - Police 6901	1,162.00
203	7040	Supplies - Vehicle R&M	1643 Golf Mill Ford	572962P	Motor Mount - Police Stock	117.34
204	7040	Supplies - Vehicle R&M	1643 Golf Mill Ford	572981P	Bracket, Housing, Insulator - Police 6090	330.66
205	7040	Supplies - Vehicle R&M	1643 Golf Mill Ford	573738P	Door Handle - PW 2008	55.78
206	7040	Supplies - Vehicle R&M	8244 Des Plaines Ace Hardware	5829	Fuel Line Shut Off Valve - PW 5061	8.99
207	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	892751	Brake Caliper & Core Deposit - PW 6094	155.04
208	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	892904	Lug Nuts - Police 6928	10.65
209	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894019	Brake Kits, Rotors, Brake Pads, Etc Police 6073 & 6084	1,018.10
210	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894044	4 Filters - Fire 7709	100.56
211	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894045	Filter - Fire 7709	19.41
212	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894162	Calipers & Core Deposits - Police 6084	310.70
213	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894494	Parts Return & Core Deposit Returned - 5PW4 & Police 6084	(133.34)
214	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894537	Brake Pads & Rotors - Police 6001	445.50
215	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894554	Brake Parts & Core Deposits - Police 6001	572.68
216	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894651	Brake Fluid - Fire 7707	8.36
217	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894683	Brake Pads & Rotors - Police 6001	120.02
218	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894728	Returned Brake Pads, Rotors, Calipers, & Cores - Police 6001	(654.48)
219	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894746	5 Batteries & 5 Core Deposits - Police Stock	740.60
220	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894851	Core Deposits Returned - PW Stock	(90.00)
221	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	895064	2 Filters & 2 Spark Plugs - PW 5061	19.86
222	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	895078	3 Filters - PW 5061	24.53
223	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	895110	Fuel Filter - PW 5061	6.75
224	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	895130	12 Filters - PW Stock	53.28
225	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	895146	Expansion Valve - Police 6086	22.86
226	7040	Supplies - Vehicle R&M	8104 MacQueen Emergency Group	P28425	7 Gauges - Fire 7607	1,204.08
227	7040	Supplies - Vehicle R&M	8104 MacQueen Emergency Group	P28433	Seat Cushion - Fire 7603	628.36
228	7120	Gasoline	1014 Al Warren Oil Company Inc	W1654773	5,002 Gals Unleaded Gasoline - 05/20/2024, R-189-23	12,694.33

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Line #	Account		Vendor	Invoice	Invoice Description	Amount		
229	7130	Diesel	1014 Al Warren Oil	W1654774	2,000 Gals Bio Diesel - 05/20/2024,	4,381.00		
			Company Inc		R-189-23			
230	7320	Equipment < \$5,000	8454 NAPA Auto Parts	894586	Air Hose Couplers & Adapters - Shop	59.22		
					Equipment			
231	7320	Equipment < \$5,000	9076 BedLock Safety	BSP00123	Bedlock Dump Body Supports - PW Shop	1,175.00		
			Products LLC					
Total 54	Total 540 - Vehicle Maintenance							

Total 50 - Public Works & Engineering

	Police Department								
Division	Division: 100 - Administration								
232	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	184.16			
Total 10	0 - Admin	istration				184.16			

Divisior	Division: 610 - Uniformed Patrol								
233	5325	Training	8885 Klein, Miles L	Reimb 5/13-5/17	Reimb Mileage Crisis Intervention Training 5/13-5/17/2024	54.94			
234	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	2,049.41			
235	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	42.29			
Total 610 - Uniformed Patrol									

Division	Division: 620 - Criminal Investigation							
236	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	1,061.40		
Total 62	Total 620 - Criminal Investigation							

Division	n: 630 - Si	upport Services				
237	6015	Communication Services	1265 NIPAS Northern Illinois Police Alarm Sys	15357	Language Line April 2024	25.00
238	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	490.19
239	6110	Printing Services	1284 DocuMentors Inc	1567	125 DP Police General Info Handbooks 2024 3/13/2024	966.76
240	6195	Miscellaneous Contractual Services	1077 Shred-It USA LLC	8007079857	Shredding Services for 04/05-05/01/2024	495.22
241	7200	Other Supplies	8469 Coro Medical LLC	PS-INV205295	Defibrillator Pads (7 Adult, 5 Pediatric)	1,895.00
Total 63		ort Services				3,872.17

Total 60 - Police Department

	Fire Department								
Division	Division: 100 - Administration								
242	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	36.01			
243	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	345.76			
244	7300	Uniforms	3212 On Time Embroidery Inc	123024	5 Polos - Deputy Chief	255.00			
Total 100 - Administration						636.77			

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148,588.83

7,264.37

	Account		Vendor	Invoice	Invoice Description	Amount
Divisior	n: 710 - Er	mergency Services				
245	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	1,045.22
246	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	986.84
247	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	42.29
248	6035	Dispatch Services	5067 Regional Emergency Dispatch Center	164-24-06	R-141-13 Monthly Dispatch Service- June 2024	68,947.00
249	6035	Dispatch Services	5067 Regional Emergency Dispatch Center	STARCOM6-24	R-141-13 Monthly Dispatch Service - Starcom - June 2024	437.00
250	6315	R&M Buildings & Structures	1660 Safety-Kleen Systems Inc	94389351	Parts Washer Solvent Station 61 - 05/16/2024	175.78
251	7000	Office Supplies	1644 Warehouse Direct Inc	5725496-0	1 Box Paper, 2 Dz Highlighters, 1 Pack Legal Pads, 2 Dz Marker	122.26
252	7025	Supplies - Custodial	8019 Ferguson Facilities	0663533	2 Mops, 2 Cases Car Wash, 2 5 Gal. BH-38 - Station 61	517.64
253	7025	Supplies - Custodial	8019 Ferguson Facilities	0663534	2 Mops, 2 Cases Car Wash, 2 5 Gal. BH-38 - Station 62	517.64
254	7025	Supplies - Custodial	8019 Ferguson Facilities	0663535	2 Mops, 2 Cases Car Wash, 2 5 Gal. BH-38 - Station 63	517.64
255	7025	Supplies - Custodial	1043 WW Grainger Inc	9126030015	1 Case Hand Soap, 2 Cases Laundry Detergent	333.29
256	7025	Supplies - Custodial	1043 WW Grainger Inc	9126108654	3 Boxes Trash Bags, 5 Cases Toilet Paper, 10 Cases Paper Towels	918.32
257	7200	Other Supplies	1046 Hinckley Spring Water Co	22728338 050924	66 - 24 Packs of Water for Fire Vehicles	596.41
258	7300	Uniforms	3212 On Time Embroidery Inc	116026	1 Pair of Boots - Paramedic	179.00
259	7300	Uniforms	3212 On Time Embroidery Inc	116028	1 Pair of Boots- Paramedic	179.00
260	7300	Uniforms	3212 On Time Embroidery Inc	116029	1 Pair of Boots - Paramedic	179.00
261	7300	Uniforms	3212 On Time Embroidery Inc	122442	4 Polos, 5 T-Shirts, Cap - Engineer	278.00
262	7300	Uniforms	3212 On Time Embroidery Inc	122865	5 Polos - Lieutenant	280.00
263	7300	Uniforms	3212 On Time Embroidery Inc	122866	4 Shirts - Battalion Chief	204.00
264	7300	Uniforms	3212 On Time Embroidery Inc	122904	4 Shirts, Cap, Belt, 1 Pant - Paramedic	312.00
265	7300	Uniforms	3212 On Time Embroidery Inc	122926	Belt, 2 Pants, 2 Nameplates, Cap, Alterations - Lieutenant	368.00
266	7300	Uniforms	3212 On Time Embroidery Inc	123500	1 Shorts- Paramedic	72.00
267	7300	Uniforms	3212 On Time Embroidery Inc	124165	Safety Toe Shoes - Paramedic	154.00
268	7300	Uniforms	3212 On Time Embroidery Inc	124265	Quartermaster Stock	15,294.00
269	7300	Uniforms	3212 On Time Embroidery Inc	124268	8 Shirts- Quartermaster Stock	590.00
270	7300	Uniforms	3212 On Time Embroidery Inc	124522	1 Fleece, Nameplate, 1 Jacket, Belt, Etc Battalion Chief	692.00

Line #	Account		Vendor	Invoice	Invoice Description	Amount
271	7320	Equipment < \$5,000	8616 Conway Shield Inc	0522018	1 Shield - Fire Chief	230.50
Total 71	0 - Emerge	ency Services				94,168.83

Division	Division: 720 - Fire Prevention								
272	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	247.41			
Total 72	0 - Fire Pre	evention	•	•		247.41			

Division	Division: 730 - Emergency Management Agency								
273	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	93.18			
274	7300	Uniforms	3212 On Time Embroidery Inc	123744	100 EMA Patches - Quartermaster Stock	450.00			
Total 73	0 - Emerg	ency Management Agency	•	-		543.18			

Total 70 - Fire Department

Departr	Department: 90 - Overhead								
275	6140	Leases	3827 Pitney Bowes Inc	3106653286	Mailing Machine Lease 03/30-06/29/2024	1,209.72			
Total 90	- Overhea	ad				1,209.72			

Total 100 - General Fund

			Fund: 208	8 - TIF #8 Oaktor	1	
276	6000	Professional Services	3338 Gabriel Environmental Services	0524A0064	Asbestos Survey - 1177 Walnut - 05/17/2024	3,710.00
277	6000	Professional Services	3338 Gabriel Environmental Services	0524L0094	Phase I Environmental Site Assessment - 1177 Walnut - 04/23/2024	2,400.00
278	6005	Legal Fees	8133 Elrod Friedman LLP	17377	4-24 Non-Retainer Matters	1,027.00
Total 20	08 - TIF #8	3 Oakton				7,137.00

			Fund	: 230 - Motor Fuel Tax Fu	und	
279	7140	Electricity	1033 ComEd	0178722000- 05/24	Electricity Service 04/08-05/07/2024	286.84
280	7140	Electricity	1033 ComEd	0234022000- 05/24	Electricity Service 04/08-05/07/2024	313.93
281	7140	Electricity	1033 ComEd	0723323111- 05/24	Electricity Service 04/09-05/08/2024	43.81
282	7140	Electricity	1033 ComEd	0732352000- 05/24	Electricity Service 04/09-05/08/2024	871.32
283	7140	Electricity	1033 ComEd	1630326000- 05/24	Electricity Service 04/09-05/08/2024	88.39
284	7140	Electricity	1033 ComEd	2881862000- 04/24	Electricity Service 03/22-04/22/2024	16,930.55
285	7140	Electricity	1033 ComEd	5291872222- 05/24	Electricity Service 04/09-05/08/2024	379.78
286	7140	Electricity	1033 ComEd	5314957000- 05/24	Electricity Service 04/10-05/09/2024	19.63
287	7140	Electricity	1033 ComEd	6535402111- 05/24	Electricity Service 04/09-05/08/2024	48.43
288	7140	Electricity	1033 ComEd	6663583000- 05/24	Electricity Service 04/09-05/08/2024	154.43
289	7140	Electricity	1033 ComEd	8603942222- 05/24	Electricity Service 04/08-05/07/2024	2,885.04

95,596.19

533,659.21

Line #	Account		Vendor	Invoice	Invoice Description	Amount			
290	7140	Electricity	1033 ComEd	8648133333- 05/24	Electricity Service 04/09-05/08/2024	319.31			
291	7140	Electricity	1033 ComEd	9340744000- 05/24	Electricity Service 04/09-05/08/2024	404.83			
292	7140	Electricity	1033 ComEd	9710731222- 05/24	Electricity Service 04/12-05/13/2024	102.59			
Total 2	30 - Motoi	r Fuel Tax Fund				22,848.88			

	Fund: 250 - Grant Projects Fund						
Program	rogram: 2520 - Capital Grants						
293	6005	Legal Fees	8133 Elrod Friedman LLP	17364	4-24 Non-Retainer IEMA & FEMA Review Phase 5	2,663.50	
Total 25	Total 2520 - Capital Grants						

Total 250 - Grant Projects Fund

			Fund: 260 -	Asset Seizure Fund		
v	m: 2620 -	1				
294	5325	Training	4777 Site Firearms Training Center, The	3/6/2024	TRT Training 5/13-5/15/2024 (23 TRT Operators)	6,918.90
295	5325	Training	7280 Kolk, Ryan	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
296	5325	Training	3225 Barrett, Ryan	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Sergeant	197.50
297	5325	Training	5491 Armstrong, Jimmy	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
298	5325	Training	3757 Oppegard, Michael	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Commander	197.50
299	5325	Training	8720 Cerasa, Matthew M	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
300	5325	Training	3766 Contreras, Andres	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Sergeant	197.50
301	5325	Training	3760 Gitzinger, John	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Commander	197.50
302	5325	Training	3764 Bjork, Erik	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
303	5325	Training	5490 Galvan, Alfonso	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
304	5325	Training	3715 Chapman, Michael	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Commander	197.50
305	5325	Training	7757 Alonso, Daniel	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Detective	197.50
306	5325	Training	3221 Bowler, Matthew	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Commander	163.25
307	5325	Training	9082 Birholtz, Joseph	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
308	5325	Training	8858 Murray, Bradley	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
309	5325	Training	8727 Jeon, Dale	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50
310	5325	Training	7281 Azar, Jack	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 - Officer	197.50

2,663.50

Line #	Account		Vendor	Invoice	Invoice Description	Amount
311	5325	Training	8871 Zefeldt, Nicholas	Reimb 5/13-5/15	Reimb Travel Site Training 5/13-5/15/2024 -	197.50
					Officer	
312	8020	Vehicles	9040 Miles Chevrolet LLC	Deal #320623	2024 Chevrolet Equinox (DEA TFO)	31,203.00
					05/23/2024 - R-42-24	
Total 26	20 - DEA					41,445.15

Program	Program: 2640 - Forfeit								
313	6115	Licensing/Titles	1744 IL Secretary of State	2024 Chevy-17R	2024-2025 Registration for New Squad #17	151.00			
314	6115	Licensing/Titles	1744 IL Secretary of State	2024 Chevy-17T	Title For New Squad #17	165.00			
315	6115	Licensing/Titles	1744 IL Secretary of State	AR63051-2025	2024-2025 Sqd 20 Vehicle Registration for	151.00			
					2025 Lic AR63051				
Total 26	640 - Forfei	it				467.00			

Total 260 - Asset Seizure Fund

			Fund: 400	- Capital Projects F	und	
316	6000	Professional Services	1394 Gewalt Hamilton Associates Inc	5452.102-3	TO #2 Thacker/Westgate Ped. Crossing Eng Svcs 04/01-04/28/24	550.00
317	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	38.01
318	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	197.61
319	8100	Improvements	1067 Orange Crush	108681-P2	R-115-23 - Halston Market Turn Lane Improvements Retainage	13,528.98
otal 4	00 - Capit	al Projects Fund				14,314.60

	Fund: 430 - Facilities Replacement Fund							
320	6315	R&M Buildings &	2016 Signarama	44663	Window Decals 1488 & 1490 Miner Street	935.00		
		Structures						
Total 43	otal 430 - Facilities Replacement Fund							

	Fund: 500 - Water/Sewer Fund								
	Non Departmental								
Division	Division: 510 - Engineering								
321	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	42.29			
Total 51	0 - Engine	ering				42.29			

Divisior	n: 550 - W	/ater Systems				
322	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	979.14
323	6040	Waste Hauling & Debris Removal	5772 Berger Excavating Contractors Inc	DP_LM_002	872 Tons Dirt Spoils - PW - 03/16- 04/26/2024	4,359.95
324	6195	Miscellaneous Contractual Services	5400 Dahme Mechanical Industries Inc	20240245	TO#4 Alt Valve Install - Howard Tank - 05/01/2024, R-33-24	4,600.00
325	6195	Miscellaneous Contractual Services	4022 M E Simpson Co Inc	42404	Fire Hydrant Maint & Flow Testing - 05/01- 05/15/2024, R-3-24	36,954.00
326	6310	R&M Vehicles	8938 James Drive Safety Lane LLC	1493	Safety Lane Inspection - PW April 2024	184.00

41,912.15

Line #	Account		Vendor	Invoice	Invoice Description	Amount
327	6335	R&M Water Distribution	8683 T and T Landscape	12624	Parkway Maint & Planting Services - 04/01-	26,863.20
527	0335	System	Construction Inc	12024	05/01/2024, R-237-23	20,803.20
328	7000	Office Supplies	1644 Warehouse Direct Inc	5725153-0	Ink, Copy Paper, Note Pads - Lead Lines	82.84
329	7020	Supplies - Safety	8244 Des Plaines Ace Hardware	5827	3 Bottles Hand Soap	10.77
330	7035	Supplies - Equipment R&M	1078 Acme Truck Brake & Supply Co	01_401629	4 Grease Seals - PW 9055	21.64
331	7035	Supplies - Equipment R&M	1520 Russo Power Equipment	SPI20636493	Trigger Interlock - Water Stock	6.99
332	7040	Supplies - Vehicle R&M	1643 Golf Mill Ford	572949P	Washer Reservoir - PW 9028	86.84
333	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	894161	Brake Pads & Rotors - PW 9028	148.50
334	7050	Supplies - Streetscape	1757 JCK Contractors Inc	36580	20-22 Cu Yds Top Soil - 05/16/2024	440.00
335	7070	Supplies - Water System Maintenance	7691 Builders Asphalt LLC	132975	13.18 Tons of Cold Patch - 01/22/2024	2,174.70
336	7070	Supplies - Water System Maintenance	7691 Builders Asphalt LLC	133013	10.53 Tons of Cold Patch - 02/02/2024	1,737.45
337	7070	Supplies - Water System Maintenance	1057 Menard Incorporated	34469	Nipples, Adapters, Elbows, Bushings, Etc Meter Install Parts	119.10
338	7070	Supplies - Water System Maintenance	1057 Menard Incorporated	34889	Drill Bits, Door Stops Kickdowns, Screws - Maple & Central	59.08
339	7070	Supplies - Water System Maintenance	8244 Des Plaines Ace Hardware	5812	2 Tape Measures & Roof Patch	54.87
340	7070	Supplies - Water System Maintenance	1072 Prairie Material	891491635	2.00 Cu Yds Concrete - Repairs - 05/13/2024	368.50
341	7070	Supplies - Water System Maintenance	1072 Prairie Material	891496784	1.0 Cu Yd Concrete - Repairs - 05/16/2024	184.25
342	7070	Supplies - Water System Maintenance	1072 Prairie Material	891497891	5.0 Cu Yds Concrete - Repairs - 05/17/2024	961.25
343	7070	Supplies - Water System Maintenance	1072 Prairie Material	891507133	1.0 Cu Yd Concrete - Repairs - 05/23/2024	184.25
344	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U591773	2 Hymax Couplings	1,729.02
345	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U670050	4 Gaskets	31.52
346	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U838154	Megalug Flanges, Gaskets, T-Heads	131.50
347	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U856973	Valves, Couplings, Hymax, Copper Tubes, Pipe, Etc.	6,729.80

Line #	Account		Vendor	Invoice	Invoice Description	Amoun
348	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U912320	Returned Flanges	(1,350.00
349	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U920527	Brass Bushings	380.00
350	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U937916	Hydrant Extension	920.00
351	7120	Gasoline	1014 Al Warren Oil Company Inc	W1654773	5,002 Gals Unleaded Gasoline - 05/20/2024, R-189-23	2,271.95
352	7130	Diesel	1014 Al Warren Oil Company Inc	W1654774	2,000 Gals Bio Diesel - 05/20/2024, R-189- 23	430.92
353	7140	Electricity	1033 ComEd	0133057000- 05/24	Electricity Service 04/09-05/08/2024	284.20
354	7140	Electricity	1033 ComEd	1839544000- 05/24	Electricity Service 04/17-05/16/2024	8,608.56
355	7140	Electricity	1033 ComEd	2357736000- 05/24	Electricity Service 04/08-05/07/2024	4,056.49
356	7140	Electricity	1033 ComEd	6143192222- 05/24	Electricity Service 04/10-05/07/2024	375.90
357	7140	Electricity	1033 ComEd	6267352000- 05/24	Electricity Service 04/05-05/06/2024	344.56
358	7140	Electricity	1033 ComEd	8117433111- 05/24	Electricity Service 04/05-05/06/2024	77.71
359	7140	Electricity	1033 ComEd	8216981222- 05/24	Electricity Service 04/09-05/08/2024	133.85
360	7140	Electricity	1033 ComEd	9933185000- 05/24	Electricity Service 04/05-05/06/2024	27.69
361	7320	Equipment < \$5,000	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	455.92
362	7320	Equipment < \$5,000	1520 Russo Power Equipment	SPI20669993	Cut-Off Saw	1,439.00
Total 55	0 - Water	Systems	• • •	•	·	107,659.91

Divisior	n: 560 - Se	ewer Systems				
363	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	679.77
364	6310	R&M Vehicles	8938 James Drive Safety Lane LLC	1493	Safety Lane Inspection - PW April 2024	123.00
365	7030	Supplies - Tools & Hardware	8244 Des Plaines Ace Hardware	5751	Duster, Scrub Brush, Blowoff Duster, Pole	70.16
366	7040	Supplies - Vehicle R&M	3315 Regional Truck Equipment	281279	2 Seat Covers - PW 8045	429.79
367	7040	Supplies - Vehicle R&M	8454 NAPA Auto Parts	893936	2 Filters - PW 8020	46.56
368	7075	Supplies - Sewer System Maintenance	1057 Menard Incorporated	34296	Utility Boards	43.98
369	7120	Gasoline	1014 Al Warren Oil Company Inc	W1654773	5,002 Gals Unleaded Gasoline - 05/20/2024, R-189-23	1,112.66
370	7130	Diesel	1014 Al Warren Oil Company Inc	W1654774	2,000 Gals Bio Diesel - 05/20/2024, R-189-23	1,027.08
371	7140	Electricity	1033 ComEd	1350600111- 05/24	Electricity Service 04/09-05/08/2024	1,948.12

Line #	Account	t	Vendor	Invoice	Invoice Description	Amoun
372	7140	Electricity	1033 ComEd	1672756000- 05/24	Electricity Service 04/09-05/08/2024	90.24
373	7140	Electricity	1033 ComEd	2898592111- 04/24	Electricity Service 03/29-04/29/2024	862.48
374	7140	Electricity	1033 ComEd	3203161222- 05/24	Electricity Service 04/09-05/09/2024	75.34
375	7140	Electricity	1033 ComEd	4194141222- 05/24	Electricity Service 04/05-05/06/2024	74.27
376	7140	Electricity	1033 ComEd	4306353111- 05/24	Electricity Service 04/09-05/08/2024	83.39
377	7140	Electricity	1033 ComEd	4411397000- 05/24	Electricity Service 04/09-05/09/2024	25.92
378	7140	Electricity	1033 ComEd	6189685000- 05/24	Electricity Service 04/05-05/06/2024	135.79
379	7140	Electricity	1033 ComEd	6401366000- 05/24	Electricity Service 04/05-05/06/2024	218.30
380	7140	Electricity	1033 ComEd	6795805000- 05/24	Electricity Service 04/15-05/09/2024	189.95
381	7140	Electricity	1033 ComEd	7817006000-05/24	Electricity Service 04/09-05/08/2024	31.67
382	7140	Electricity	1033 ComEd	8079533000- 05/24	Electricity Service 04/09-05/08/2024	120.55
383	7140	Electricity	1033 ComEd	8303763000- 05/24	Electricity Service 04/05-05/06/2024	109.46
384	7140	Electricity	1033 ComEd	9162423111- 05/24	Electricity Service 04/08-05/07/2024	38.21
385	7140	Electricity	1033 ComEd	9416515000- 05/24	Electricity Service 04/08-05/07/2024	31.09
386	7300	Uniforms	2067 Cutler Workwear	PS-INV034413	2 Pairs Jeans - Quartermaster Uniforms	22.49
otal 5	60 - Sewe	er Systems	I	I	-	7,590.27

387	6195	Miscellaneous	4583 Argon Electric	9781	TO#36 Dish Install - Howard/Maple - 11/25-	14,776.00	
		Contractual Services	Company, Inc		12/23/2023, R-174-21		
388	6195	Miscellaneous Contractual Services	6992 Core & Main LP	U922637	Water Meter Supplies & Installs - 05/17/2024, R-20-24	18,300.00	
389	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U388804	5 Water Meters	10,340.00	
390	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U809095	6 Water Meters	11,028.00	
391	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U811059	16 Water Meters	2,640.00	
392	7070	Supplies - Water System Maintenance	6992 Core & Main LP	U837381	12 Pulse Cable	17,400.00	
otal 590 - Water Facilities							

Total 00 - Non Departmental

189,776.47

	Departn	epartment: 30 - Finance								
	393	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	65.94			
L										

Line #	Account		Vendor	Invoice	Invoice Description	Amount
394	6025	Administrative Services	7961 BridgePay Network	59249	Utility Web, Business License Trans &	296.00
			Solutions LLC		EnerGov Fees April 2024	
395	7000	Office Supplies	1644 Warehouse Direct Inc	5725613-0	4 Cartons of Copy Paper	122.20
Total 30	- Finance					484.14

Total 500 - Water/Sewer Fund

190,260.61

			Fund: 510 - City	Owned Parking	Fund	
396	6320	R&M Parking Lots	4583 Argon Electric Company, Inc	9809	Pump Removal - Civic Deck - 05/20/2024	1,107.00
397	6320	R&M Parking Lots	6377 Rose Paving LLC	PS-INV142080	Pavement Maintenance - Library Deck - 05/18/2024	8,025.10
398	7060	Supplies - Parking Lots	1728 Total Parking Solutions Inc	106738	24 Rolls Receipt Paper	1,115.00
399	7060	Supplies - Parking Lots	7146 JOS Services Inc	12518	Plumbing Supplies - Parking Decks	2,450.00
400	7140	Electricity	1033 ComEd	2342835000- 05/24	Electricity Service 04/09-05/08/2024	199.18
401	7140	Electricity	1033 ComEd	2909033000- 05/24	Electricity Service 04/09-05/08/2024	1,712.95
402	7140	Electricity	1033 ComEd	3113384000- 05/24	Electricity Service 04/09-05/08/2024	22.68
403	7140	Electricity	1033 ComEd	6664774000- 05/24	Electricity Service 04/09-05/08/2024	1,329.97
404	7140	Electricity	1033 ComEd	6691471222- 05/24	Electricity Service 04/09-05/08/2024	1,117.41
Total 51	LO - City C	Owned Parking Fund	-	-		17,079.29

	Fund: 520 - Metra Leased Parking Fund							
405	6015	Communication Services	1552 Verizon Wireless	9964081527	Communication Services 04/14-05/13/2024	72.02		
406	7140	Electricity	1033 ComEd	3270235000- 05/24	Electricity Service 04/05-05/06/2024	95.91		
407	7540	Land Lease	1165 Union Pacific Railroad Company	April 2024	Parking Fees for April 2024	3,572.32		
Total 5	20 - Metr	a Leased Parking Fund		-		3,740.25		

			Fund: 70	0 - Escrow Fund		
408	2224	Special Event - Food Truck Round Up	1050 Journal & Topics Newspapers	192432	Full Page Newspaper Ad for Food Truck Round Up 5/15/24 Edition	1,275.00
409	2224	Special Event - Food Truck Round Up	6045 Double D Booking	32520	Entertainment for Food Truck Round Up 5/21, 8/20, 9/17/24	1,300.00
410	2224	Special Event - Food Truck Round Up	1106 Chromatech Printing Inc	9604/26554	Coloring Pads for Food Truck Round Up on 5/21/24	190.00
411	2226	Special Events - July 4th	3227 Jesse White Tumbling Team	07/04/24	Entertainment for Parade 7/4/24	1,350.00
412	2226	Special Events - July 4th	7302 Puszkiewicz, David	20240704	Uncle Sam Entertainment at Parade 7/4/24	250.00
413	2226	Special Events - July 4th	8847 Haran, Kelly M	74-2024	Betsy Ross Entertainment at Parade 7/4/24	250.00
414	2226	Special Events - July 4th	9085 Hardy, A Ghazarian	76661605	Face Painting at Fireworks 06/30/2024	280.00

415 2430	Escrow - Police Items	1320 IL State Police	20240401755	Einsennint Deelenneund Cheel, Comisses Annil	
			20240401733	Fingerprint Background Check Services April 2024	113.00
416 2493	Escrow - CED Development	8133 Elrod Friedman LLP	17369	4-24 Reimb Redevelopment	172.00
417 2493	Escrow - CED Development	8133 Elrod Friedman LLP	17370	4-24 Reimb Redevelopment	1,075.00
418 2493	Escrow - CED Development	8133 Elrod Friedman LLP	17385A	4-24 Reimb Redevelopment	1,024.00
419 2493	Escrow - CED Development	8133 Elrod Friedman LLP	17385A	4-24 Reimb Redevelopment	64.00
otal 700 - Eso	row Fund	•	•		7,343.00

Manual Payments

Line #	Account		Vendor	Invoice	Invoice Description	Amount
				Fund: 100 - General Fu	und	
				Public Works & Engine	ering	
Divisior	n: 535 - Fao	cilities & Ground	s Maintenance			
420	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	32.43
				x175190		
421	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	71.43
				x451619		
422	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	292.00
				x465297		
423	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	46.09
				x532457		
424	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	42.18
				x597838		
425	7110	Natural Gas	1064 Nicor	05/13/24	Natural Gas Service 04/11-05/12/2024	165.67
				x621249		
426	7110	Natural Gas	1064 Nicor	05/14/24	Natural Gas Service 04/11-05/13/2024	46.73
				x692396		
Total 53	85 - Faciliti	ies & Grounds M	laintenance	-		696.53

Total 50 - Public Works & Engineering

	Police Department					
Division	n: 610 - Un	iformed Patrol				
427	6015	Communication	1032 Comcast	05/18/24 x6724	Internet/Cable Service June 2024	105.00
		Services				
Total 61	otal 610 - Uniformed Patrol 10					105.00

Total 60 - Police Department

				Fire Department		
Divisior	n: 730 - E	mergency Managem	ent Agency			
428	6015	Communication	1032 Comcast	05/22/2024	Internet/Cable Service June 2024	63.00
		Services		x6716		
Total 73	otal 730 - Emergency Management Agency					63.00

Total 70 - Fire Department

Departr	nent: 90 ·	- Overhead				
429	6015	Communication	1032 Comcast	202331459-8482	Internet/Cable Service 05/15-	1,575.00
		Services			06/14/2024	
430	6015	Communication	1032 Comcast	05/20/2024	Internet/Cable Service June 2024	63.00
		Services		x6732		
431	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	661.37
		Services	LLC	87	06/20/2024	
432	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	416.95
		Services	LLC	87	06/20/2024	
433	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	98.00
		Services	LLC	87	06/20/2024	
434	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	370.00
		Services	LLC	87	06/20/2024	
435	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	370.00
		Services	LLC	87	06/20/2024	

696.53

63.00

105.00

Manual P	Payments
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Line #	Account		Vendor	Invoice	Invoice Description	Amount
436	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	591.00
		Services	LLC	87	06/20/2024	
437	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	795.00
		Services	LLC	87	06/20/2024	
438	6015	Communication	8622 RCN Telecom Services	41208850100168	Internet/Cable Service 05/21-	500.00
		Services	LLC	87	06/20/2024	
439	6025	Administrative	1005 A/R Concepts Inc	Jan-July 2022	CDP101 Jan-July 2022 Collections for	939.15
		Services			Parking Tickets	
Total 90) - Overhea	ad				6,379.47

Total 100 - General Fund

	Fund: 260 - Asset Seizure Fund								
Program	Program: 2640 - Forfeit								
440	6115	Licensing/Titles	1744 IL Secretary of State	22-23510 R	2024-2025 Registration for Forfeited 2015 Dodge Ram	151.00			
441	6115	Licensing/Titles	1744 IL Secretary of State	22-23510 T	Title for Forfeited 2015 Dodge Ram	165.00			
Total 26	640 - Forf	eit				316.00			

Total 260 - Asset Seizure Fund

	Fund: 510 - City Owned Parking Fund					
442	7545	Property Tax	8813 1425 Ellinwood	014-2-20-2024	1425 Ellinwood Property Tax Reimb	4,213.00
		Expense	Apartments LLC		2023 1st Installment R-187-23	
Total 51	Total 510 - City Owned Parking Fund					4,213.00

	Fund: 600 - Risk Management Fund					
443	5565	Claims Administration	1048 IDES IL Dept of Employment Security	15893266165	Unemployment Insurance Q1 2024 Claim Charges	7,086.00
Total 60)0 - Risk M	Fee lanagement Fund				7,086.00

Grand Total

18,859.00

City of Des Plaines Warrant Register 06/17/2024 Summary

	Amount	Transfer Date
Automated Accounts Payable	\$ 841,893.49 **	6/17/2024
Manual Checks	\$ 18,859.00 **	5/29/2024
Payroll	\$ 1,438,852.75	5/31/2024
RHS Payout	\$ -	
Electronic Transfer Activity:		
JPMorgan Chase Credit Card	\$ -	
Chicago Water Bill ACH	\$ -	
Postage - Pitney Bowes	\$ 3,050.00	6/4/2024
Utility Billing Refunds	\$ 1,436.46	5/28/2024
Debt Interest Payment	\$ 102,600.00	5/30/2024
IMRF Payments	\$ -	
Employee Medical Trust	\$ 701,420.26	6/3/2024
Total Cash Disbursements:	\$ 3,108,111.96	

* Multiple transfers processed on and/or before date shown

** See attached report

Adopted by the City Council of Des Plaines This Seventeenth Day of June 2024 Ayes _____ Nays _____ Absent _____

Jessica M. Mastalski, City Clerk

Andrew Goczkowski, Mayor

NEW BUSINESS #1B.

DES PLAINES

FINANCE DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5300 desplaines.org

MEMORANDUM

Date:	June 7, 2024
To:	Dorothy Wisniewski, City Manager
From:	Agnes Podbial, Interim Director of Finance
Cc:	Jack Tierney, Management Analyst
Subject:	Amendments to Chapter VII – "Purchasing" of the City of Des Plaines Financial Policy and Procedure Manual

Issue: For the City Council to approve amendments to Chapter VII – "Purchasing" of the City of Des Plaines Financial Policy and Procedure Manual.

Analysis: The Purchasing Policy, last revised on December 5, 2022, raised the City Council's approval threshold from \$20,000 to \$25,000. Alongside this document are proposed updates to the Purchasing Policy. It suggests raising the purchasing authority of Department Heads from \$2,500 to \$5,000. Additionally, it proposes increasing the change order authority for Department Heads from 5% or \$2,500 to 5% or \$5,000, whichever is less, and for the City Manager from 5% or \$5,000 to 10% or \$10,000, whichever is less.

Purchasing Authority Analysis: Staff completed a comprehensive Purchasing Policy analysis December 5, 2022, evaluating the increase of the City's purchasing threshold from \$20,000 to \$25,000. The analysis revealed that the state statutory threshold for bids with City Council approval stands at \$25,000, with 75 percent of surveyed municipalities having thresholds at \$24,999 or higher. Additionally, inflation analysis indicated a significant reduction in purchasing power since the last adoption of changes to the Purchasing Policy. An expenditure analysis highlighted that increasing the threshold to \$25,000 would streamline processes, reducing the need for City Council approval for a small percentage of lower-value contracts. This change enhanced efficiency by reallocating staff time towards projects generating higher value for the City while ensuring compliance with state law and City code requirements.

Increasing Department Head purchasing authority from \$2,500 to \$5,000 would parallel the benefits of increasing the purchasing threshold from \$20,000 to \$25,000 in terms of efficiency and streamlining procurement processes. As indicated in **Table 1** below, there were 536 Purchase Orders ("POs") that exceeded \$2,500 in fiscal year 2023, totaling \$50,889,698 in value. Of these 536 POs, 132 were between \$2,500 and \$5,000. Increasing the threshold to \$5,000 would eliminate 25% of the items that would require City Manager approval. Given that these items represent 0.9% of the total value of all contracts approved by the City Manager during the 2023 fiscal year, more importantly is that 99.1% or \$50.4 million would still require City Manager and City Council approval.

Purchase Order (PO) Value	# of POs	% of POs	Total Value of POs	% of Total Value	Average PO Value	Median PO Value
\$2,500 to \$5,000	132	25%	458,370.85	0.90%	3,472.51	3,383.50
> \$5,001	404	75%	50,431,327.42	99.1%	124,830	15,851
Total	536	100.0%	\$ 50,889,698	100.0%	\$ 128,302	\$ 19,234

Increasing Department Head change order authority from 5% or \$2,500 to 5% or \$5,000, whichever is less, and City Manager change order authority from 5% or \$5,000 to 10% or \$10,000, whichever is less, provides greater flexibility and autonomy to Department Heads and the City Manager in managing projects effectively. With a higher change order authority limit, staff can address unforeseen circumstances or necessary adjustments without the need for a detailed approval process, leading to faster decision-making and project progress. This increased authority streamlines administrative procedures. Additionally, it empowers Department Heads and the City Manager to respond quickly to changing project requirements or emergencies, ensuring that projects remain on track and within budget constraints.

Proposed amendments to the City code and enactment of the "Purchasing Policies and Guidelines" will provide clear direction to City personnel in the procurement of construction, repair, and maintenance projects; supplies; and services in accordance with the requirements of State Law and the City code.

Recommendation: I recommend that the City Council adopt the revised Chapter VII – "Purchasing" of the City of Des Plaines Financial Policy and Procedure Manual and approve Resolution R-119-24, which amends Department Head purchasing authority from \$2,500 to \$5,000 and increases Department Head change order authority from 5% or \$2,500 to 5% or \$5,000, whichever is less, and City Manager change order authority from 5% or \$5,000 to 10% or \$10,000, whichever is less.

Attachments:

Attachment 1 - Resolution R-119-24 Exhibit A – Financial Policy and Procedure Manual Chapter VII – Purchasing

CITY OF DES PLAINES

RESOLUTION R - 1 1 9 - 24

A RESOLUTION AMENDING THE CITY PURCHASING POLICY REGARDING THE DEPARTMENT HEAD PURCHASING AUTHORITY AND DEPARTMENT HEAD AND CITY MANAGER CHANGE ORDER AUTHORITY.

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

WHEREAS, Chapter 10, titled "Purchasing Policies and Guidelines," of Title 1, titled "Administrative," of the City Code of the City of Des Plaines sets forth certain regulations regarding the procurement and purchase of goods, services, and work by the City; and

WHEREAS, Chapter VII, titled "Purchasing," of the City's Financial Policy and Procedure Manual sets forth certain policies and procedures regarding the procurement and purchase of goods, services, and work by the City (collectively, the "*Purchasing Policy*"); and

WHEREAS, the City desires to amend the Purchasing Policy to update and clarify Department Head purchasing authority and Department Head and City Manager Change Order authority; and

WHEREAS, the City Council has determined that it is in the best interest of the City to: amend the Purchasing Policy as set forth in this Resolution;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as the findings of the City Council.

<u>SECTION 2</u>: <u>APPROVAL OF PURCHASING POLICY</u>. The City Council hereby approves the Purchasing Policy in substantially the form attached to this Resolution as Exhibit A, and in a final form approved by the General Counsel.

SECTION 3: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

[SIGNATURE PAGE FOLLOWS]

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

CITY CLERK

Published in pamphlet form this _____ day of _____, 2024.

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

PLAINES I L L I N O I S

FINANCIAL POLICY AND PROCEDURE MANUAL

Chapter VII – Purchasing

Approved: June 17, 2024 Resolution: R-119-24 Effective Date: June 17, 2024



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7.1 <u>Purpose</u>

The purpose of these purchasing procedures is to provide direction to City personnel in the procurement of construction, repair, and maintenance projects; supplies; and services in accordance with the requirements of state law and Title I, Chapter 10 of the City Code of the City of Des Plaines ("City Code"). These procedures may be amended by the City Manager, so long as no provision of these purchasing procedures conflicts with any provision of the City Code. All City personnel shall abide by the policies and procedures set forth herein.

7.2 <u>Scope</u>

These policies and procedures govern all procurement for the City, except as otherwise provided by the City Code. These procedures include who is authorized to approve various procurements, flexible purchasing, open market purchasing, competitive bidding process, requests for proposals, qualification based selection, approval of matching funds in connection with grants to the City, and general requirements applicable to all purchases.

Any dollar amounts used in these policies and procedures shall be gross of (including) the value of any trade-in of City property.

7.3 <u>Ethics</u>

A. Code of Ethics

Transactions relating to the expenditure of public funds require the highest degree of public trust to protect the interests of the City and the residents of Des Plaines. City officials and employees shall perform their duties for the benefit of the citizens of the City in strict accordance with Chapter 9, titled "Code of Ethics," of Title 1 of the City Code.

B. Discipline

It shall be the responsibility of the City Manager to determine if a Code of Ethics violation has occurred and if disciplinary action up to and including discharge is necessary.

7.4 <u>Purchasing Authority</u>

A. Authorization

Department Heads, the Director of Finance, and the City Manager shall be the primary individuals responsible for ensuring that the procurement of goods and services are authorized by the annual appropriation ordinance and the annual budget approved by the City Council and made in strict compliance with the procedures set forth herein. Although Department Heads, the Director of Finance, and the City Manager may delegate their respective purchasing authority to subordinates, Department Heads, the Director of Finance, and the City Manager shall still bear



the responsibility to ensure that these procedures are followed. The purchase authority required is determined by the amount of the intended purchase, as follows:

- 1. **Under** $$5,000^{2,500}$: All procurements for construction, repair, and maintenance projects; supplies; and services in amounts less than $$5,000^{2,500}$ shall require the authorization of the Department Head.
- 2. \$5,02,500 up to \$25,000: All procurements for construction, repair, and maintenance projects; supplies; and services in amounts of \$5,0002,500 up to \$25,000 shall require the authorization of the Department Head and City Manager or designee.
- 3. *\$25,000 or greater:* All procurements for construction, repair, and maintenance projects; supplies; and services in the amount of \$25,000 or greater shall require the authorization of the City Council by Resolution in addition to the Department Head and City Manager or designee.

B. Related Procurements

Related procurements that will be necessary or required in order to complete a project or facility within the fiscal year, or within 120 days regardless of fiscal year, shall be treated as a single procurement and the sum of the related procurements shall be used to determine the applicable level of authority.

C. Credit Approval

- 1. **Vendor Accounts:** All applications to establish credit accounts with suppliers or vendors must be approved by the Purchasing Agent. The Purchasing Agent shall, from time to time as needed, issue a list of all suppliers and vendors with which the City maintains a credit account. Each application to establish a credit account shall accompany the Contract/Vendor Credit Line Set Up form included as Attachment A.
- 2. *Credit Cards:* All City credit cards and credit limits for City employees and officials must be approved in advance by the City Manager or designee, upon recommendation of the applicable Department Head.

D. Lease and Installment Contracts

All leases and all options or installment purchase contracts must be accompanied by the Contract/Vendor Credit Line Set Up Form included as Attachment A and approved by:

- 1. the City Manager or designee in all cases; and
- 2. the City Council in cases where the amount is \$25,000 or greater; and



3. the Purchasing Agent

7.5 <u>Purchasing Policies</u>

A. Appropriation Required

All procurements authorized in accordance with these policies and procedures must correspond to funds appropriated and budgeted by the City Council for the fiscal year in which the purchase is made.

B. Flexible Purchasing

Procurements for construction, repair, and maintenance projects; supplies; and services involving an expenditure less than 5,0002,500 must be awarded pursuant to the method determined by the Department Head to be the most effective means of obtaining the best value for the City.

C. Open Market Purchasing

Except as provided in Section 7.5 E below, procurements for construction, repair, and maintenance projects; supplies; and services involving an expenditure equal to or greater than $\frac{5,0002,500}{2,500}$ but less than 25,000 must be awarded in conformance with the Open Market Purchasing Procedures set forth in Section 7.6.

D. Competitive Bids

Except as provided in Section 7.5 E below, all procurements for construction, repair and maintenance projects; supplies; and services involving expenditures of \$25,000 or more must be awarded to the lowest responsible bidder in conformance with the Competitive Bidding Procedures set forth in Section 7.7 and the City Code.

E. Exceptions to Requirement

Except when otherwise directed by the City Manager or the City Council, the Flexible Purchasing, Open Market Purchasing and Competitive Bidding Procedures set forth in Sections 7.5 B, C and D above will not apply in the following circumstances, regardless of the amount of the expenditure:

- 1. *Specially Authorized Waiver*: Contracts for construction, repair, and maintenance projects; supplies; and services authorized by a majority vote of all members of the City Council may be awarded without engaging in Flexible Purchasing, Open Market Purchasing or Competitive Bidding Procedures.
- 2. *Professional Services:* Contracts for professional services which require a high degree of professional skill where the ability or fitness of the individual



plays an important part shall be awarded in conformance with the Request for Proposals and Qualification Based Selection Procedures set forth in Section 7.8.

- 3. *Emergency Purchases.* Procurements or contracts that are necessary in the case of accident or other circumstances creating an emergency to protect life, the public health and safety, and public property, may be entered into by the City Manager or designee, who shall follow the Open Market Purchasing Procedures set forth in Section 7.6 when practicable. All emergency procurements and contracts involving expenditures of \$25,000 or more must be presented to the City Council for ratification. Emergency change orders are subject to Section 7.5 J.
- 4. **Sole Source Purchases.** Contracts for construction, repair, and maintenance projects; supplies; and services that are produced or provided by only one supplier or vendor may be awarded without engaging in Flexible Purchasing, Open Market Purchasing or Competitive Bidding. For this exception to apply, the following steps must be followed:
 - i. The Department Head or designee, shall specify such supplier's or vendor's make or brand and shall attempt to obtain competitive quotes from authorized dealers or distributors of such supplier or vendor and, if possible, directly from such supplier or vendor. If the Department Head determines that there is more than one supplier or vendor for the construction, repair, and maintenance projects; supplies; or services, the Department Head shall award the contract through Flexible Purchasing, Open Market Purchasing, or Competitive Bidding, whichever process is applicable.
 - ii. If the Department Head or designee determines that there is only one supplier or vendor of the construction, repair; and maintenance projects; supplies; and services the City requires, he or she is authorized to negotiate and to recommend to the City Manager or designee and or City Council, as applicable, a contract with such supplier to purchase the construction, repair; and maintenance projects; supplies; and services, at prices or on terms most advantageous to the City.
 - iii. In such a case, the Department Head or designee shall make a written determination that such supplier is the sole source for such construction, repair, and maintenance projects; supplies; and services. The written determination shall be noted in the City's financial management software.



- 5. *Special Requirements Purchases:* Contracts for construction, repair, and maintenance projects; supplies; and services that are produced or provided by only one supplier or vendor meeting special City requirements may be awarded without engaging in Flexible Purchasing, Open Market Purchasing or Competitive Bidding. For this exception to apply, the following steps must followed:
 - i. If the Department Head or City Manager or designee determine that there is only one supplier or vendor that can provide the construction, repair, and maintenance projects; supplies; and services within the special parameters required by the City or pursuant to an overall plan for procurement to achieve improved public service or long term operational efficiencies for the City, he or she is authorized to negotiate and to recommend to the City Manager or City Council, as applicable, a contract with such supplier to purchase the construction, repair, and maintenance projects; supplies; and services, at prices or on terms most advantageous to the City.
 - ii. In such a case, the Department Head or City Manager or designee shall make a written determination of the basis for the special City parameters or overall plan for procurement to achieve improved public service or long term operational efficiencies for the City and that such supplier is the sole source for such construction, repair, and maintenance projects; supplies; and services. The written determination shall be on the form as required by the City Manager or designee, and noted in the City's financial management software.
- 6. *Government Joint Purchases.* Contracts for joint purchasing of construction, repair, and maintenance projects; supplies; and services with one or more governmental units shall conform to the requirements of applicable law, such as, without limitation, the Governmental Joint Purchasing Act, 30 ILCS 525/0.01 *et seq.*, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, or be approved pursuant to the exercise of the City's home rule powers. Nothing shall prevent the City from seeking quotes and bids, and making purchases, from vendors who can provide lower prices than those available through joint purchasing programs for equivalent or better items.
- 7. *Matching Funds:* Where a condition of a grant or loan of funds to the City requires the City to provide City funds as matching funds or for other purposes related to the grant or loan, the grant or loan contract must be approved pursuant to Section 7.5.



- 8. *Trade or Professional Organizations, Lobbying Groups and Governmental Services:* Membership in trade or professional organizations, lobbying groups and governmental services (e.g., the Government Finance Officers Association (GFOA) and the Northeastern Illinois Public Safety Training Academy (NIPSTA)) are not subject to the Flexible Purchasing, Open Market Purchasing and Competitive Bidding Procedures.
- 9. *Purchases of a Repetitive Nature:* Within the fiscal year, or within 90 days regardless of fiscal year, it is not necessary to repeatedly obtain quotes for purchases that are repetitive in nature as determined by the Purchasing Agent.

F. Contract Subdivision Prohibited

No contract shall be subdivided to avoid the requirements of the Competitive Bidding Procedures and Open Market Purchasing Procedures and any other Section of this Manual. This prohibition shall not prevent the repetitive purchase of construction, repair, and maintenance projects; supplies; and services which are purchased over a period of time and that cannot be reasonably anticipated in advance. Such repetitive purchases, however, should be made from vendors included on the Approved Vendor List, as defined in Section 7.5 I below, whenever possible.

G. Prepayments

Unless approved by the Department Head, City Manager or designee, or City Council, the City will not pay for goods and services until the goods are received or the service is rendered except for the following:

- 1. Deposits;
- 2. Memberships, trainings, or subscriptions;
- 3. Payment to local, State, or Federal government entities;
- 4. Service or maintenance contracts only when necessary; and
- 5. Small purchases under $\frac{5,0002,500}{2,500}$.

H. Sales Tax Exemption

City purchases are not subject to sales tax, therefore, employees shall make efforts to inform vendors of the City's tax-exempt status and to ensure that sales tax is not paid for any purchases including purchases made with petty cash or credit cards.



I. Approved Vendor List

- 1. **Distribution and Use of Vendor List:** The Purchasing Agent shall, not less than annually, issue a list of vendors and suppliers with which the City has a contract or established pricing for recurring purchases of supplies or services totaling \$25,000 or greater annually. All departments are required to consult this list before procuring supplies or services.
- 2. **Updating the Vendor List:** The Purchasing Agent shall make periodic solicitations for contracts or guaranteed price arrangements for recurring purchases of supplies or services totaling \$25,000 or greater annually. Department Heads shall annually submit requests to the Purchasing Agent to prepare an assessment of their needs for supplies or services. If the Purchasing Agent determines that there is a common need for supplies or services for which the City does not have a current contract or guaranteed price arrangement, the Purchasing Agent will seek such an arrangement in accordance with the applicable level of authority in Section 7.4.

J. Change Orders and Contract Modifications

- 1. **Department Head's Authority Other than Construction:** In procurements other than for construction, the Department Head responsible for supervision of any contract shall have authority to authorize any change to such contract that, when added to all other changes to such contract, would not increase the original contract price by more than 55% or 2,5005,000, whichever amount is less.
- 2. **Department Head's Authority Construction:** In procurements for construction, the Department Head shall have the authority to authorize any change to a contract for construction that would not increase the original contract price approved by the City Council to exceed the amount that may be authorized by the City Council when originally approved or that may be authorized from time to time.
- 3. *City Manager's Authority:* The City Manager or designee shall have authority to authorize any change to a contract that, when added to all other changes to the contract, would not increase the contract price as authorized by the City Council by more than 10% or 105,000, whichever amount is less.
- 4. *City Council's Authority:* The City Council shall have authority to authorize all other changes to contracts.
- 5. *Necessary Finding:* Pursuant to Section 5/33E-9 of the Illinois Criminal Code, any change to a contract that, when added to all other changes to the



contract, increases or decreases (a) the original cost of the contract by \$10,000 or more, or (b) the time of completion of the contract by 30 days or more, shall not be approved without a written determination by the City Manager and either the Department Head (for construction contracts), that:

- i. the circumstances said to necessitate the change were not reasonably foreseeable at the time the contract was signed; or
- ii. the change is germane to original contract as signed; or
- iii. the change is in the best interest of the City.
- 6. **Re-Bid Required:** Any change order to a public works contract that, when added to all other changes to the contact, increases the original price of the contract or any subcontract by 50% or more, shall require the portion covered by the change order to be resubmitted to bidding or quotes in the same manner as applicable to the original contract or subcontract. 50 ILCS 525/1 et seq.
- 7. *Emergencies:* All emergency change orders must be presented to the City Manager as soon as practical, and those requiring City Council approval must be submitted to the City Council for ratification.

K. Procurements Funded by "Donated" Funds

Any procurement of construction, repair, and maintenance projects; supplies; and services to be funded by monies donated to the City by third parties shall be governed by the terms of this Manual. This limitation does not apply to public improvements constructed pursuant to an annexation, subdivision or development agreement.

L. Information Technology and Computer Procurements

All procurements in the area of information technology are subject to a needs assessment and provision of information for review prior to commencing the procurement process.

M. City's Reservation of Rights

The City shall have the authority to reject the low bid, to accept any item of a quote or bid, to reject any and all quotes or bids, to accept and incorporate corrections or clarifications following bid opening and to waive irregularities and informalities in any quote or bid submitted or in the bidding process, when to do so would not, in the City's opinion, prejudice the bidding process or create any improper advantage to any bidder.



7.6 **Open Market Purchasing Procedures**

A. Number of Quotes

Open market purchases and contracts shall, wherever practicable, be based on at least three competitive quotes.

B. Notice Inviting Quotes

The person designated by these policies and procedures may solicit quotes for open marketing purchases or contracts by any one or more of the following methods:

- 1. Direct mail request to prospective vendors;
- 2. Telephone;
- 3. Facsimile;
- 4. Public notice posted in the City Hall;
- 5. Publication in a newspaper;
- 6. Notice to trade or membership organizations whose members may have relevant expertise;
- 7. Electronic mail;
- 8. Internet; and
- 9. Trade catalogs

C. Award of Contract

The Department Head or City Manager or designee may award the contract or purchase to the vendor providing the lowest responsible quote using the factors set forth in Section 7.7 F as a guide.

D. Accepting Single Quote Received

When only one quote is submitted, that fact alone shall not prevent the City from accepting that quote.

E. Documentation

The Purchasing Agent, or any other person authorized by these policies and procedures, shall keep a record of all open market purchases and the quotes



submitted for each purchase. This record shall, at minimum, contain the following information:

- 1. The process used for solicitation of quotes;
- 2. The names and contact information of vendors solicited for quotes;
- 3. The responses received from the vendors solicited for quotes; and
- 4. The grounds for selection of the vendor.

7.7 <u>Competitive Bidding Procedures</u>

A. Public Notice Required

- 1. Public notice of all invitations to bid shall be published one or more times in at least one newspaper of general circulation within the City, not less than ten days prior to the date by which all bids must be submitted to the City. The Purchasing Agent or authorized personnel may also solicit bids by sending copies of the newspaper notice directly to prospective bidders which ordinarily provide the type of construction, repair, and maintenance projects; supplies; and services being sought.
- 2. The public notice of the invitation to bid shall include, at a minimum, the following:
 - i. a general description of the materials, supplies, or work to be purchased;
 - ii. the location of the work site, if applicable;
 - iii. where bid documents may be found and reviewed;
 - iv. the place at and manner in which bids must be submitted;
 - v. the time and place for the opening of bids;
 - vi. deposit and bonding requirements; and
 - vii. a statement that the City reserves the right to reject any and all bids received.

B. Additional Information

The City reserves the right to require, from any bidder, prior to the award of a contract, additional information including, but not limited to, information regarding



the bidder's business and technical organizations; the bidder's plant, equipment and personnel available to perform the contract; the bidder's financial resources; the experience of the bidder's personnel; the bidder's experience in providing construction, repair, and maintenance projects; supplies; and services that are similar to the construction, repair, and maintenance projects; supplies; and services for which the contract will be awarded; a history of the bidder's contract defaults and litigation; and a list of the bidder's pending construction or other projects and outstanding bids and proposals.

C. Bid Security

Each bid in the amounts of \$25,000 or greater shall be accompanied by such cash deposit, in the form of a cashier's check or bid bond equal to 5% of the contract price, unless waived or the required amount is reduced by the City Manager or designee. Bidders shall be entitled to the return of their bid security, as specified in the bid package, except that a successful bidder shall forfeit its bid security upon failure on its part to enter into a binding contract as provided in the invitation to bid.

D. Submission of Bids

Hard copy bids shall be submitted to Office of the City Clerk in a sealed envelope bearing the legend "Sealed Bid for [Name of Work]" at the place and before the time for the opening of bids specified in the invitation to bid. All bids received after the time specified for the opening of bids shall be returned unopened.

Bids submitted through electronic means shall be submitted in the manner and before the time for opening of bids specified in the invitation to bid. Such bids shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for the bid opening.

E. Opening and Evaluation of Bids

All bids shall be opened in public with no less than two witnesses, which may include members of the City's staff, present at the time specified for the opening of such bids. All bids shall be tabulated and referred to staff for evaluation and recommendation to the appropriate departments and shall be kept on file by the Purchasing Agent as required by Section 7.6 E.

F. Award of Contract to Lowest Responsible Bidder

The contract shall be awarded within the time specified in the bidding documents or, if no time is specified, within a reasonable time, by written notice to the lowest responsible bidder whose bid is judged to be the best bid and most favorable to the



interests of the City. In determining the lowest responsible bidder, the City shall consider the following factors in addition to price, as applicable:

- 1. the compliance of the bid, including required plans and specifications, with bidding and contract requirements;
- 2. the ability, capacity, and skill of the bidder to perform the contract;
- 3. whether the bidder has the requisite facilities, plant, capital, financial resources, organization, and staffing to enable the bidder to perform the contract successfully and promptly, within the time specified, without delay or interference;
- 4. the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- 5. the quality of the bidder's performance of previous contracts or services;
- 6. the previous and existing compliance by the bidder with other contracts and the laws or ordinances relating to said contracts;
- 7. where relevant, the ability of the bidder to provide future maintenance and service;
- 8. the conditions placed on the bid by the bidder; and
- 9. any other factor that the City may legally consider in determining the bid that is in the City's best interest.

G. Lowest Responsible Bidder Over Budget

If the bid price from the lowest responsible bidder is considered to be higher than the original budget estimate, then the Department Head and Purchasing Agent shall seek to negotiate with the lowest responsible bidder for a reduced bid price. These negotiations, however, must not include a change in the bid specifications. Should the negotiations with the lowest responsible bidder fail to produce a satisfactory reduction in the bid price, then the Department Head and Purchasing Agent mutually agree to pursue one of the following courses of actions:

- 1. Reject all bids and begin a new bid procedure with the appropriate changes to the bid specifications, or
- 2. Recommend to the City Manager and/or City Council that the bid should be awarded to the lowest responsible bidder along with an explanation of the factors causing the difference between the original budget estimate and the bid price.



H. Accepting Single Bid Received

When only one bid is submitted, that fact alone shall not prevent the City from accepting that bid.

7.8 <u>Request for Proposals (RFP) and Qualification Based Selection Procedures</u>

A. Department Recommendation

Any contract for professional services, determined by a Department Head or Purchasing Agent to require a high degree of professional skill where the ability or fitness of the individual plays an important part, may be awarded to the person or entity whose proposal for the services is most advantageous to the City as determined by the City Manager, Director of Finance, and or the City Council.

B. Solicitation and Submission of Proposals

- 1. Solicitation and Submission of Proposals Generally: Proposals for such work may be solicited by a Department Head or Purchasing Agent, depending on the level of expenditure and whether federal funds will be used, in the manner provided for in Section 7.8 E, 7.8 F, or in such other manner as determined by the City Manager to be efficient for the submission and review of such proposals. For architectural, engineering, and land surveying services, the City shall comply with Section 7.8 E or 7.8 F, as applicable.
- 2. Solicitation and Submission of Proposals Federal Funds:
 - For contracts for engineering or design services that cost <u>\$25,000 or</u> <u>more</u>, and will be funded in whole or in part using federal funds, the Qualification Based Selection procedures set forth in Section 7.8 F must be used.
 - ii. For contracts for engineering and design services that cost <u>less than</u> <u>\$25,000</u>, and will be funded in whole or in part using federal funds, the Qualification Based Selection process set forth in Section 7.8 E may be used as long as the additional requirements set forth in Section 7.8 E(5) are satisfied.

C. Opening of Proposals

The opening of proposals shall not be open to the public to avoid disclosure of confidential information to competing professionals or firms.

D. Evaluation

Exhibit A



In making such determination, the Department Head or Purchasing Agent shall consider any evaluation factors that have been established for the proposals.

- **E. Qualification Based Selection**: *Statements of Qualifications:* Licensed architectural, engineering and land surveying firms may file a statement of qualifications and supporting performance data annually with the City.
 - 2. *Public Notice:* When the City wishes to engage in a project involving architectural, engineering, or land surveying services, the Department Head or City Manager or their designee must, subject to the exceptions detailed in Section 7.5 E, either:
 - i. mail a notice requesting a statement of interest to all firms that have a statement of qualifications on file with the City; or
 - ii. place an advertisement in at least one newspaper of general circulation within the City requesting a statement of interest in the project and a statement of qualifications, if the interested firm does not already have one on file with the City and/or post announcement on the City's website <u>www.desplaines.org/proposals</u> for at least 14 days; or
 - send a notice to all firms that have been awarded City contracts for such services or have previously submitted a proposal to the City. The notice may be sent by mail, electronic mail, or facsimile.
 - 3. *Evaluation and Selection:* The Department Head or Purchasing Agent shall, consider the interested firms' qualifications, past record and experience, performance data on file, willingness to meet time requirements, location, workload, ability of the firms' professional personnel, and any other factors that have been established in writing.

The Department Head or Purchasing Agent shall then select three firms which he or she determines to be the most qualified and rank the firms in order of qualifications.

The Department Head or Purchasing Agent shall then contact the highest ranked firm and attempt to negotiate a contract at a fair and reasonable compensation.

If fewer than three firms submit statements of interest the Department Head or Purchasing Agent may negotiate a contract with the most qualified firm that submitted a statement of interest.



- 4. *Exceptions:* The City may disregard the notice, evaluation and selection steps detailed above in three situations:
 - i. *Existing Relationship:* If the City already has a satisfactory existing relationship with a firm providing the services;
 - ii. *Emergency:* If the City Council, by resolution, determines that the services are needed on an emergency basis; and
 - iii. *Project Cost Under \$25,000:* If the cost of the services is expected to be less than \$25,000.
- 5. *Additional Federal Small Purchase Requirements:* The Qualification Based Selection process outlined in this Section 7.8 E may be used for the procurement of (i) engineering and design related consulting services that (ii) will be funded in whole or in part using federal funds and that (iii) cost less than \$25,000. However, the following additional requirements shall apply:
 - i. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to avoid using the Qualification Based Selection procedures set forth in Section 7.8 F of this Protocol.
 - ii. A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed. In instances where less than three qualified consultants respond to the solicitation, the City shall contact the IDOT District 1 Local Roads and Services office for verification that the solicitation did not contain conditions or requirements which arbitrarily limited competition.
 - iii. Contract costs may be negotiated in accordance with the Qualification Based Selection procedures set forth in this 7.8 E; however, the allowability of costs shall be determined in accordance with the Federal cost principles.
 - iv. If the cost of any contract modification or amendment would cause the total contract amount to exceed \$25,000 and the Qualification Based Selection (QBS) procedures set forth in Section 7.8 F of this Protocol were not followed, the contract becomes ineligible for federal funding on costs above \$25,000.

F. Qualification Based Selection for Federally Funded Engineering Services



The following qualification based selection procedures must be used for contracts (i) for engineering and design related consulting services that (ii) are funded in whole or in part using federal funds; provided, however, for contracts (i) for engineering and design services that (ii) will be funded in whole or in part using federal funds that (iii) cost less than \$25,000 the Qualification Based Selection process set forth in Section 7.7 E may be used as long as the additional requirements set forth in Section 7.7 E(5) are satisfied.

The qualification based selection procedures set forth below comply with federal requirements of 23 CFR 172 and the Brooks Act. Additionally, the City believes the following policies and procedures comply with Section 5-5, and specifically Section 5-5.06(e), of IDOT's *BLRS Manual*.

- 1. **Public Notice**: When the City wishes to use federal funds to engage engineering or design consulting services, the Department Head or City Manager or their designees will post an announcement on the City's website at <u>www.desplaines.org/proposals</u> and/or publish an ad in a newspaper with appropriate circulation. The announcement will be on continuous display on the City's website for at least 14 days and/or advertised in the newspaper at least twice at least 14 days prior to the acceptance of proposals.
- 2. **Project Description:** The request for proposals must include a description of the project. It may be advantageous to describe the project as broadly as possible because it may not be possible to add work to a federally funded QBS contract that was not included in the original scope and evaluation criteria. (See Section 5-5.06(f) of IDOT's *BLRS Manual.*) However, any applicable time limits associated with the overall contract should be taken into account when preparing the project description.
 - i. <u>Minimum Project Description Contents</u>. The project description must, at a minimum, do the following:
 - a. Describe in general terms the need, purpose, and objective of the project;
 - b. Identify the various project components;
 - c. Establish the desired timetable for the effort;
 - d. Identify any expected problems; and
 - e. Determine the total project budget.

Additional information may be included in the project description as warranted.



ii. <u>Project Phasing</u>. If the City does not wish to conduct an independent QBS process for each phase of a project (e.g. preliminary engineering, design engineering, construction engineering), the City must explicitly include the phases in the project description in the Request for Proposals solicitation.

If the City specifies in the project description that the solicitation is to cover multiple phases of the project, the City will not have to conduct an independent QBS process for those phases.

When a project description includes more than one phase, the contract and dollar amounts for each phase may be negotiated and authorized individually as the project progresses as long as the work being negotiated in each phase was included in the original Request for Proposals' project description.

Under this multi-phase approach, the selected firm is not guaranteed a contract for subsequent phases, if, for example, work on the previous phase was unsatisfactory or contract price cannot successfully be negotiated.

When determining whether to employ a multi-phase QBS approach and drafting the multi-phase project description, consideration should be given to the fact that projects tend to evolve through the course of preliminary engineering, design engineering and construction engineering.

- 3. *Conflict of Interest Statement:* The City requires consultants to submit a disclosure statement with their proposals, a copy of which is attached as Attachment C. The disclosure form is to be included in the Request for Proposals.
- 4. *Suspension and Debarment:* The City requires consultants to submit a disclosure statement with their proposals, a copy of which is attached as Attachment D. The disclosure form is to be included in the Request for Proposals.

In addition to the disclosure statement, the City may perform its own checks of various website resources using links from the IDOT Chief Procurement Office website, including:

- i. System for Award Management Exclusions (SAM Exclusions)
- ii. State Chief Procurement Offices (CPOs) IDOT, Capital Development Board, General Services, and Higher Education

Exhibit A



- iii. Illinois Department of Labor
- iv. Illinois Department Human Rights
- 5. *Evaluation:* The applicable evaluation factors, weighting ranges, and whether interviews might be conducted must be included in the Request for Proposals.
 - i. <u>Evaluations Factors</u>. The City Manager or Department Head or their designees will determine the evaluation factors for each project. The evaluation factors must include a minimum of four criterion. Typical criterion and recommended weighting recommended ranges are indicated below:

Technical Approach (10 - 30%) Firm Experience (10 - 30%) Assigned Staff Experience (10 - 30%) Specialized Expertise (10 - 30%) Past performance (10 - 30%) Workload Capacity (10 - 30%) In-State or Local Presence* Participation of Qualified and Certified DBE Sub-consultants* (* the total combined weight of these two factors must not exceed 10%.)

- ii. <u>Interviews</u>. In addition to the evaluation factors, the City may choose to conduct interviews with the short-listed consultants. When conducted, the interviews must occur separately and with a minimum of three consultants, or all qualified consultants if less than three respond.
- iii. <u>Requests for Cost Estimates/Proposals Prohibited</u>. In accordance with QBS principles, the City shall not seek formal or informal submission of verbal, written, or sealed cost estimates or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation prior to selecting the top-ranked consultant for negotiation.
- 6. *Selection:* The City requires a minimum three-person selection committee. Typically the selection committee members include the City Manager, the Director of Finance and the Department Head or their designees. For engineering projects, the Director of Public Works & Engineering takes the lead in forming the selection committee based upon the unique circumstances of each individual project.



The selection committee members must certify that they do not have a conflict of interest. The City requires each member of the selection committee to provide an independent score for each proposal using a form similar to the matrix below, prior to the selection committee meeting.

Criteria	Weighting	Potential Points	Firm 1	Firm 2	Firm x
Criterion 1					
Criterion 2					
Criterion x					
Total	100%	100			

The selection committee members' scores are averaged for a committee score, which is used to establish a short list of three firms. The committee score may be adjusted by the committee based on group discussion and information gained from presentations and interviews to develop a final ranking.

If there are fewer than three qualified consultant proposals received, and the City determines that one or both are qualified, IDOT approval is required prior to negotiating a contract.

If there are other firms within 10% of the minimum score, the City Manager or Department Head may choose to expand the short list to include more than three firms.

Notification is to be provided to the responding applicants of the final ranking of the three top-ranked firms resulting from the selection process.

- 7. *Independent Project Cost Estimate:* The City will prepare an independent in-house estimate for the project prior to contract negotiations. The estimate will be used in the negotiation with short-listed firms.
- 8. *Contract Negotiation:* Once the Selection Committee selects the short-listed firms, the City will negotiate with the short-listed firms as described below.

The City uses a two-person team to negotiate with the short-listed firms. The team typically consists of the City Manager, the Director of Finance, and/or the Department Head. Members of the negotiation team may delegate this responsibility to staff members.

If an agreement cannot be reached on the scope and fee with the top-ranked consultant, the City may drop negotiations with the top-ranked consultant and continue the process with the second-ranked consultant. The City may



continue with the third-ranked consultant, if agreement cannot be reached with the second-ranked consultant.

As indicated in 7.8 F(5), prior to the selection of the top-three ranked consultants for negotiation, no costs can be solicited. However, after completion of the selection process, it is acceptable to request sealed cost proposals from the top three ranked consultants. The consultant's sealed cost proposal is only opened as negotiation is underway with that particular consultant. Upon successful negotiation with a consultant, any unopened sealed cost proposals shall be securely disposed of without opening.

- 9. *Acceptable Costs:* The City will perform a basic review of the contract, before submitting it to IDOT for a more detailed review, to ensure that the contract costs and the indirect cost rates are compliant with Federal cost principles.
- 10. *Invoice Processing:* The project manager assigned to any project using federal funds will review and approve all invoices prior to payment and submission to IDOT for reimbursement.
- 11. **Project Administration:** The assigned project manager will monitor work on the project in accordance with the contract and will provide updates to the Department Head. The City will evaluate the consultant and keep appropriate files. The City follows IDOT's forms, requirements and procedures for federally funded projects, including, without limitation, the Local Public Agency Agreement for Federal Participation (BLR 05310), the Engineering Services Agreement (BLR 05510), and BLRS Form 05613.

7.9 <u>General Purchasing Procedures</u>

A. Form of Contract

Contracts should be in writing, and on forms approved by the City Manager and Legal Counsel where possible; oral contracts are prohibited except in emergency situations. All contracts requiring the City Manager's or designee's approval, as determined by the applicable level of authority in Section 7.4, shall be routed using the approved memo format, included as Attachment B.

B. Purchase Orders

1. \$5,0002,500 or greater: Prior to a request for any payment for a procurement of a good or service of \$5,02,500 or more, a purchase order must be created by the user and approved by the Department Head and City Manager or designee. All purchase orders are created and approved electronically using the City's financial management software. All



necessary fields should be filled in along with any uploaded documents, including vendor quotes, bid documents, proposals, and a copy of the approved City Council Resolution authorizing the purchase, as applicable.

2. Change Orders To Existing Purchase Orders: In some instances, it may become necessary to change a purchase order to include additional costs or quantities. When this occurs, the employee who completed the original purchase order must, in addition to complying with the requirements of Section 7.5 J of these policies and procedures, initiate a change order in the financial management software and submit for approval determined by the applicable level of authority.

C. Invoice Processing

- 1. **Initial Entry:** Upon confirmation that all goods and services are received and accepted (except as provided in Section 7.5 G), the authorized department designee will initiate an invoice batch using the City's financial management software. All necessary fields should be filled in and applied to the purchase order if applicable. All invoices submitted for payment must be approved by the Department Head and Director of Finance or designee.
- 2. **Backup Documentation:** Upon Department Head approval of all invoices entered into the City's financial management software, all backup documentation is then forwarded to the Finance Department before the deadline set forth in the "Deadline Dates memo" published annually by the Accounts Payable Clerk in the preceding year.
- 3. *Warrant Register Deadline:* All approved invoices presented for payment on the warrant register must be received in the Finance Department before the deadline set forth in the "Deadline Dates memo".
- 4. *Vendor Payments:* All payments will be promptly mailed to vendors (with supporting remittance information enclosed) the next business day following the City Council approval of the warrant register, unless otherwise specified in writing by a Department Head.

D. Petty Cash Purchasing Policies

A limited number of employees may be authorized by their Department Heads to make purchases of \$25.00 or less that are unable to be made using a procurement card. All purchases made with petty cash require a:

- 1. Completed petty cash slip describing the purchase and budget account code.
- 2. Receipt or other proof of payment.



3. Signature of the individual seeking reimbursement, the applicable Department Head and Purchasing Agent.

It is important to remember that City purchases, including petty cash purchases, are not subject to sales tax. When making a purchase, employees are responsible for presenting the City's Sales Tax Exemption letter to avoid being charged Sales Tax.

The following petty cash funds have been established from which reimbursements for departmental purchases may be made:

1.	Asset Seizure Petty Cash Funds	\$300
2.	City Hall - Finance	\$1,500

E. Financial Assurance

- 1. **Bonds:** Any supplier or vendor must, before commencing any construction work that is subject to the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 et seq., submit to the City a performance bond and a labor and material payment bond from a surety company licensed to do business in the State of Illinois with a general rating of A- or better for an amount not to exceed 110% of the total contract amount. With respect to all other procurements, any vendor or supplier shall provide performance security and labor and material payment security as determined by the Department Head or the Purchasing Agent.
- 2. **Insurance:** Any supplier or vendor for a procurement shall provide certificates and policies of insurance evidencing those types of insurance coverages and limits as may be required by the Purchasing Agent based on the nature of the procurement and the risks involved. Such policies shall be in a form, and from companies, acceptable to the Purchasing Agent. Such insurance 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.

F. Retention of Bids, Quotes and Proposals

All bids, quotes and proposals of vendors to whom a procurement is awarded shall be retained for the duration of the procurement and the applicable statute of limitations for any claims. All other bids, quotes and proposals shall be retained for the longer of: (A) at least one year following the end of the fiscal year in which received or (B) completion of any construction involved in the procurement, except where otherwise provided by applicable law or policy of the City.



ATTACHMENT A



CITY OF DES PLAINES VENDOR APPROVAL FORM

INSTRUCTIONS: COMPLETE ALL SECTIONS OF THIS FORM <u>Prior</u> to purchasing good or service and send to purchasing agent for Approval.

Section 1

REQUESTOR INFORMATION		
Date:		
Requestor Name:		
Department:		

Section 2

VENDO	DR INFORMATION		
Individual or Legal Name of Business:			
Contact Name:			
Phone:	Email:		
Please provide a brief description of the products and/or services provided:			

Section 3

CONFIRMATION

I have checked LOGOS and I confirm that vendor does NOT already exist.

Section 4

ATTACHMENTS

Attach to this form a Price Quote* that contains (at a minimum):

- o Description of Products and/or Services procured
- Legal Name of Business or Individual
- Remittance Address
- Contact Information

*If department is unable to (1) obtain price quote prior to purchasing good / service or (2) complete any section of this form, please contact purchasing.

	FINANCE DEPT USE ONLY			
1	Purchasing Initial & Date:	Request Reviewed	Good Standing	Entered into LOGOS
	Accounts Payable Initial & Date:	□ W-9 Requested	Entered into Credit Card	Entered into LOGOS

ROUTE: Department \rightarrow Purchasing \rightarrow Accounts Payable \rightarrow Purchasing

Revised 12/17/2018



CITY OF DES PLAINES 1420 Miner Street Des Plaines, IL 60016 847-391-5300

0:	From:	
e: Request for Signature		
e check the appropriate be Take Necessary Action	ox below For your Information	Reply
For your Comments	See Me About the Attached	For your Records
Per your Request	For Signature (s)	Route and Return
For your Approval	For your Review	Copy to File
	Message	

Attachment C



QUALIFICATION BASED SELECTION CONFLICT OF INTEREST DISCLOSURE FORM

The City's Code of Ethics prohibits public officials or employees from performing or participating in an official act or action with regard to a transaction in which he has or knows he will thereafter acquire an interest for profit, without full public disclosure of such interest. This disclosure requirement extends to the spouse, children and grandchildren, and their spouses, parents and the parents of a spouse, and brothers and sisters and their spouses.

To ensure full and fair consideration of all proposals, the City requires all applicants including owners or employees to investigate whether a potential or actual conflict of interest exists between the applicant and the City, its officials, and/or employees. If the applicant discovers a potential or actual conflict of interest, the applicant must disclose the conflict of interest on this form or an attachment thereto, identifying the name of the City official or employee with whom the conflict may exist, the nature of the conflict of interest, and any other relevant information. The existence of a potential or actual conflict of interest does NOT, on its own, disqualify the disclosing applicant from consideration. Information provided by applicants in this regard will allow the City to take appropriate measures to ensure the fairness of the proposal process.

The City requires all applicants to submit this Conflict of Interest Disclosure Form. This Form must be executed by a person that is authorized to execute contracts for the applicant.

("Applicant"), hereby certifies that it has conducted an investigation into whether an actual or potential conflict of interest exists between the applicant, its owners and employees and any official or employee of the City of Des Plaines.

Applicant further certifies that it has disclosed any such actual or potential conflict of interest below. Applicant acknowledges that if applicant has not disclosed any actual or potential conflict of interest, the City may disqualify the applicant from this Request for Proposal process.

Signature of Applicant if the Applicant is an Individual Signature of Partner if the Applicant is a Partnership Signature of Officer if the Applicant is a Corporation

Print Name

Title

The above statements must be subscribed a sworn to before a notary public. Subscribed and Sworn to this _____ day of _____, 20___.

Notary Public

DISCLOSE ALL POTENTIAL OR ACTUAL CONFLICTS OF INTEREST BELOW (attach additional pages as necessary):

Name of City Official or Employee:

Nature of the Conflict of Interest:



Attachment D

QUALIFICATION BASED SELECTION SUSPENSION OR DEBARMENT DISCLOSURE FORM

("Applicant"), hereby certifies that it has conducted an investigation into whether any of the following have occurred within the previous 10 years: suspension or debarment from contracting with any governmental entity; professional licensure discipline; bankruptcies; adverse civil judgments and administrative findings; and criminal felony convictions.

Applicant further certifies that it has disclosed any such suspension or debarment below. Applicant acknowledges that if Applicant has not disclosed any actual or potential conflict of interest, the City may disqualify the applicant from this Request for Proposal process. This disclosure is a continuing obligation and must be promptly supplemented for accuracy throughout the procurement process and term of the contract, if the bid or offer is successful.

Signature of Applicant if the Applicant is an Individual Signature of Partner if the Applicant is a Partnership Signature of Officer if the Applicant is a Corporation

Print Name

Title

The above statements must be subscribed a sworn to before a notary public. Subscribed and Sworn to this _____ day of _____, 20____.

Notary Public

DISCLOSE ALL SUSPENSIONS OR DEBARMENTS BELOW (please attach additional pages as necessary):



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

	MEMORANDUM
Date:	June 6, 2024
То:	Dorothy Wisniewski, City Manager
From:	Jonathan Stytz, AICP, Senior Planner JS
Cc:	Jeff Rogers, AICP, Director of Community & Economic Development Jour
Subject:	Zoning Text Amendments Regarding Equipment Rental and Leasing, Case #24-022-TA

Issue: The petitioner is proposing to modify Sections 12-7-3.K, 12-7-4.G, and 12-13-3 to define, categorize, and create specific standards for equipment rental and leasing uses depending on the zoning district.

PIN:	Citywide
Petitioner:	City of Des Plaines, 1420 Miner Street, Des Plaines, IL 60016
Case Number:	#24-022-TA
Request Description:	The City of Des Plaines is proposing amending the Zoning Ordinance to alter/expand the allowance for equipment rental and leasing, distinguish between small and large equipment, alter/rename existing <i>Leasing/Rental Agents, Equipment</i> term to define small equipment for rental and lease, and create a new term to define large equipment for rental and lease.

Background

Chapter 13 of the Zoning Ordinance, "Definitions," currently contains the following term related to the rental and leasing of equipment, a use which is allowed only via a conditional use permit in the C-3 General Commercial and C-4 Regional Shopping districts:

LEASING/RENTAL AGENTS, EQUIPMENT: An establishment, the principal use or purpose of which is the rental of equipment which includes the following general items: personal hand and power tools, small-scale air compressors, trailers with one thousand nine hundred (1,900) pound capacity or less, lawn and garden equipment residential generators, floor and carpet cleaners, heaters, fans, ladders, painting, and wallpaper equipment. "Leasing/rental agents, equipment" shall not include any use otherwise listed specifically in a zoning district as a permitted or conditional use. The display of motor vehicles for lease shall be allowed in all required yards but may not be in conflict with other provisions of this title. This use shall follow the off- street parking regulations for motor vehicle sales and vehicle leasing/rental agent establishments to accommodate employee, guest, and related vehicle parking (*Section 12-13-3 of the Zoning Ordinance*).

While this term and definition provide some allowance for the rental or leasing of equipment, it is limited in scope and variety of the types of equipment that can be offered for rent. In addition, staff has received a request for a proposed equipment rental and leasing use at 125 E. Oakton Street (M-2 General Manufacturing zoning), which would offer an inventory of both small equipment items (e.g., hand tools, fans, ladders) and larger equipment items (e.g., cranes, loaders, bulldozers) especially related to construction and facilities maintenance.

Proposed Amendments

The full proposed amendments are attached and are summarized below:

Section 12-7-3, Commercial Districts Regulations: Amend subsection K., "Commercial Use Matrix," of this section to rename the existing *Leasing/Rental Agents, Equipment* term to "*Leasing/Rental Agents, Small Equipment*" and retain the current conditional use ("C") designation within only the C-3 and C-4 districts.

Section 12-7-4, Manufacturing Districts Regulations: Amend subsection G., "Manufacturing Use Matrix," of this section to:

- Add new "Leasing/Rental Agents, Small Equipment" use and designate it as a <u>permitted use by</u> <u>right</u> ("P") in the M-1 Limited Manufacturing district and the M-2 General Manufacturing district.
- Add new "*Leasing/Rental Agents, Large Equipment*" use term and designate it as a <u>conditional</u> <u>use</u> ("C") in the M-1 Limited Manufacturing district and the M-2 General Manufacturing district.

Section 12-13-3, Definition of Terms:

- Rename the existing *Leasing/Rental Agents, Equipment* term to "*Leasing/Rental Agents, Small Equipment*" and revise/expand the list of equipment types denoted as small equipment.
- Add new "Leasing/Rental Agents, Large Equipment" term and description with a list of equipment types denoted as large equipment.

Planning and Zoning Board (PZB) Recommendation: The PZB held a public hearing on May 28, 2024, to consider the requests. The PZB voted 5-0 to recommend that City Council approve the Text Amendment request. The rationale for the PZB's vote is captured in the attached minutes from the May 28, 2024 meeting.

City Council Action: Pursuant to Section 12-3-7.D.4 of the Zoning Ordinance, the Council has the final authority on the Text Amendment request. The Council may approve, approve modifications, or deny Ordinance Z-11-24, which includes the requested text amendment for the equipment rental and leasing use.

Attachments:

- Attachment 1: 365 Equipment and Supply Letter of Intent
- Attachment 2: Chairman Szabo Letter
- Attachment 3: Excerpt of Approved Minutes from the May 28, 2024 PZB Meeting

Ordinance Z-11-24

365 Equipment & Supply Des Plaines Location- Intent

It is our mission to offer sales and rentals of the best building supply products and construction equipment in the new Des Plaines location. With our unwavering commitment to excellence and dedication to exceeding expectations, we strive to continuously improve upon our products, services, and value.

Your premier equipment rental and building products provider.

365 Equipment & Supply is the ultimate source for construction-related needs, from small tools like drill bits and saws, to insulation and PPE products. Whether you're looking to rent or to buy, we can secure the equipment and supplies you need to get your job done safely and efficiently. The rental offering at the Des Plaines location consists of hand tools, safety products, ladders, bakers, UTV's, Survey, Skid steers and standard height scissors lifts. Our Barrington location holds our heavy equipment offering of cranes- mobile & tower, excavation, platforms, and jobsite trailers. We will not be renting or selling any heavy equipment out of the Des Plaines location at 125 E Oakton.

Pro-grade equipment and supplies on demand.

365 Equipment & Supply provides consumable products to both general contractors and subcontractors throughout the Midwest.

To meet the diverse needs of our customers, we sell a wide selection of supplies and small equipment.

Our commitment

At 365 Equipment & Supply, we're committed to providing our customers with a flawless process. From your initial contact with us to the final sale or return of your rental equipment, we strive to create a world class customer experience in the new Des Plaines Location.

To achieve this, we focus on maintaining the following standards at 365:

• To bring unmatched value to our customers

- To differentiate ourselves from our competitors
- To promote 365 as a valuable partner, not just a product or service provider

Exterior Storage Request:

We would like to request a variance to stack packaged lumber above 8' within our fenced in yard on the east side of the building.

Bryan Olson Chief Operating Officer 365 Equipment & Supply <u>bolson@365equipmentandsupply.com</u> C- 847-254-3480



May 29, 2024

Mayor Goczkowski and Des Plaines City Council CITY OF DES PLAINES

Subject: Planning and Zoning Board, Text Amendment for Equipment Rental and Leasing, 24-022-TA

RE: Consideration of a Text Amendment to Redefine, Categorize, and Expand Allowance for Equipment Rental and Leasing

Honorable Mayor and Members of the Des Plaines City Council:

The Planning and Zoning Board (PZB) held a public hearing on March 28, 2024 to consider the request.

- 1. CED staff summarized the staff report with slides providing an overview of the existing definition, categorization, and allowance of equipment rental and leasing uses in Des Plaines. Staff noted the limited scope of the existing definition and allowance of this type of use in comparison to rental and leasing uses for moving vehicles and non-moving vehicles as rationale for further clarification and extension of the equipment rental and leasing use into the Manufacturing district. Staff described each of the proposed amendments and the rationale surrounding each.
- 2. PZB members asked how this benefit the 365 Equipment and Supply business listed in the packet at 125 E. Oakton Street; if these amendments would benefit any other specific business; if 365 Equipment and Supply is currently operating at 125 E. Oakton Street; if this amendment would allow 365 Equipment and Supply to locate larger equipment on the subject property; if the proposed amendments cover the type of equipment that 365 Equipment and Supply looks to rent and lease; and to explain the business operations of 365 Equipment and Supply and its relation to the proposed amendments.

Staff responded that the proposed amendments would allow 365 Equipment and Supply to locate and operate at 125 E. Oakton Street; that staff is unaware of other specific businesses that this would benefit but that the amendments would allow other equipment rental and leasing businesses to operate based on the type of equipment they are renting/leasing and the property zoning; that this amendment would allow 365 Equipment and Supply to locate larger equipment only inside the building or in the rear yard with a conditional use; that the amendments would cover the range of equipment that 365 Equipment and Supply—which is mostly limited to smaller equipment but does contain larger items such as scissor lifts and cranes—and that a representative from 365 Equipment and Supply is here to answer any specific questions related to their business and proposed operations.

Brian Olson from 365 Equipment & Supply provided an overview of the company stating that they are a building material and equipment supplier that is a sister company to Pepper Construction. He noted that they currently have a location in Barrington, Illinois where they store larger equipment but would utilize the property at 125 E. Oakton Street for the rental and leasing of small equipment. Mr. Olson described that they mainly rent/lease equipment to Pepper Construction but do also rent to outside contractors (about 17 percent of their business). He added they would have a showroom at the 125 E. Oakton Street location for the public to visit and would share a portion of the building with Pepper Construction.

- 3. No one from the public spoke regarding this request.
- 4. The PZB voted 5-0 to recommend that City Council approve the proposed text amendments without any conditions.

Respectfully submitted,

Janes & Szalo

James Szabo, Des Plaines Planning and Zoning Board, Chairman Cc: City Officials/Aldermen

Pending Applications:

1. Address: Citywide Case Number: 24-022-TA

The petitioner is proposing to modify Sections 12-7-3.K, 12-7-4.G, and 12-13-3 to define, categorize, and create specific standards for equipment rental and leasing uses depending on the zoning district.

Petitioner:	City of Des Plaines, 1420 Miner Street, Des Plaines, IL 60016
Request Description:	The City of Des Plaines is proposing amending the Zoning Ordinance to alter/expand the allowance for equipment rental and leasing, distinguish
	between small and large equipment, alter/rename existing <i>Leasing/Rental</i> Agents, Equipment term to define small equipment for rental and lease, and
	create a new term to define large equipment for rental and lease.

Background

Chapter 13 of the Zoning Ordinance, "Definitions," currently contains the following term related to the rental and leasing of equipment, a use which is allowed only via a conditional use permit in the C-3 General Commercial and C-4 Regional Shopping districts:

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While this term and definition provide some allowance for the rental or leasing of equipment, it is limited in scope and variety of the types of equipment that can be offered for rent. In addition, staff has received a request for a proposed equipment rental and leasing use at 125 E. Oakton Street (M-2 General Manufacturing zoning), which would offer an inventory of both small equipment items (e.g., hand tools, fans, ladders) and larger equipment items (e.g., cranes, loaders, bulldozers) especially related to construction and facilities maintenance.

Proposed Amendments

The full proposed amendments are attached and are summarized below:

Section 12-7-3, Commercial Districts Regulations: Amend subsection K., "Commercial Use Matrix," of this section to rename the existing *Leasing/Rental Agents, Equipment* term to

"*Leasing/Rental Agents, Small Equipment*" and retain the current conditional use ("C") designation within only the C-3 and C-4 districts.

Section 12-7-4, Manufacturing Districts Regulations: Amend subsection G., "Manufacturing Use Matrix," of this section to:

- Add new "Leasing/Rental Agents, Small Equipment" use and designate it as a <u>permitted use by right</u> ("P") in the M-1 Limited Manufacturing district and the M-2 General Manufacturing district.
- Add new "*Leasing/Rental Agents, Large Equipment*" use term and designate it as a *conditional use* ("C") in the M-1 Limited Manufacturing district and the M-2 General Manufacturing district.

Section 12-13-3, Definition of Terms:

- Rename the existing *Leasing/Rental Agents, Equipment* term to *"Leasing/Rental Agents, Small Equipment"* and revise/expand the list of equipment types denoted as small equipment.
- Add new "*Leasing/Rental Agents, Large Equipment*" term and description with a list of equipment types denoted as large equipment.

Standards for Zoning Text Amendment:

The following is a discussion of standards for zoning amendments from Section 12-3-7.E. of the Zoning Ordinance. The PZB may recommend the City Council approve, approve with modifications, or deny the amendments. The PZB *may* adopt the following rationale for how the proposed amendments would satisfy the standards, or the Board may use its own.

1. Whether the proposed amendment is consistent with the goals, objectives, and policies of the comprehensive plan, as adopted and amended from time to time by the City Council;

These amendments help clarify and expand upon the existing equipment rental and leasing use classification across different districts to address a current gap in the Zoning Ordinance. While equipment rental and leasing can be described as a commercial use, the proposed amendments would provide equipment rental and leasing businesses with alterative locations for their operations that may be more appropriate in size, customer base, and separation from residences.

2. Whether the proposed amendment is compatible with current conditions and the overall character of existing development;

The proposed amendments better define and categorize the different types of equipment for rental or lease, creating distinct allowances based upon the equipment classification (in two groups, "small" or "large"). The amendments limit equipment rentals and leasing to items defined as small equipment and retain the current site plan review mechanism through a conditional use permit for this use in a C-3 or C-4 district where a site-specific analysis is warranted to access its compatibility with the existing development. The amendments extend this site plan review requirement for larger equipment rental and leasing uses proposed on properties in the M-1 and M-2 districts, which need additional analysis and consideration based on the existing development and proposed equipment to be stored on site. Given the

scope of items identified as small equipment, the small equipment rental and leasing is proposed to be a permitted use by right in the M-1 and M-2 districts.

3. Whether the proposed amendment is appropriate considering the adequacy of public facilities and services available to this subject property;

The proposed amendments would not impact the public facilities and services available to properties located within any district that allows this use as the storage of equipment for rental and lease would likely not require additional public facilities and services to the properties for which they are located. Depending on the specific property, the equipment rental and leasing operation could be accommodated within the existing development without any major changes to the site.

4. Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction; and

The amendments as proposed would not be expected to create any new adverse effect on surrounding properties. For instance, the proposed amendments would require the storage of equipment related to small equipment rental and leasing uses to be stored indoors in a showroom or storage area, which limit its operations to an approved structure and would minimize the impact of this use type on surrounding properties. Similarly, the amendments would restrict the storage of equipment related to large equipment rental and leasing uses to a location within an approved structure (i.e., indoors) or outside in the rear yard of the subject property. The M-1 district currently prohibits the open storage of any items requiring properties in this district to store equipment within an approved structure. The M-2 district allows open storage, but has built-in storage location, height, and screening regulations that would govern the capacity and extent of rental and leasing equipment on a subject property. These proposed amendments along with the existing site plan review regulations for each district will allow for equipment rental and leasing at a certain scale based on the zoning district while still considering the impact on neighboring properties and opportunities for public comment.

5. Whether the proposed amendment reflects responsible standards for development and growth.

The proposed text amendments facilitate a path toward responsible standards for development and growth of equipment rental and leasing uses in select commercial and manufacturing districts. The purpose of the amendments is to categorize equipment into two different types and create specific standards for each type in order to exercise responsible development of this type of use and foster commercial site design in a way that is consistent with the surrounding neighborhood.

PZB Procedure and Recommendation: Under Section 12-3-7 of the Zoning Ordinance, the PZB has the authority to *recommend* that the City Council approve, approve with modifications, or deny the abovementioned amendments. The Board should clearly state any modifications so that its recommended language can be incorporated in the approving ordinance passed on to the Council, which has final authority on the proposal.

Meeting Discussion Summary:

Senior Planner Stytz provides an overview of the proposed text amendment. Mr. Stytz describes the existing definition and regulations related to location of display of items and off-street parking regulations. Currently the use is classified as a conditional use in C-3 and C-4. It is currently not allowed in the manufacturing district. The issue is that the existing definition has a limited scope. There is also a wider range of uses allowed for leasing, such as moving and non-moving vehicles, in these zoning districts. The scope is currently limited on this type of use.

Senior Planner Stytz describes the proposed amendment to define leasing by small and large equipment. The definitions and regulations differ depending on whether something is classified as small or large equipment leasing. The uses are split into two, allowing small equipment leasing as conditional in C-3 and C-4 zoning districts and permitted by right in the M-1 and M-2 zoning districts. The large equipment leasing is permitted as a conditional use.

Member Weaver asks how this amendment will affect 365 Equipment. Mr. Stytz states that larger equipment rentals would not be allowed without a conditional use but would be permitted with the amendment for the large equipment rentals. Member Weaver asks if there are other firms that would be affected by this in Des Plaines or would benefit from this. Mr. Stytz states that he is not aware of other businesses, but it would allow future businesses to be located here for small or large leasing operations.

Chairman Szabo asked if 365 Equipment is currently operating in Des Plaines. Mr. Stytz says they would like to locate in a specific location and this text amendment would be necessary. Mr. Stytz clarifies that a variation for a use cannot be granted, so the text amendment is necessary. Chairman Szabo asks about when Council would review and approve this. Mr. Stytz says this is tracking for the June 17th meeting.

Member Veremis asks about the letter of support and whether they would leave equipment in Barrington. Mr. Stytz says they would move some operations here and they are in the audience to answer questions.

Chairman Szabo requests a representative from 365 Equipment to present to the board. Chairman Szabo swears in Bryan Olson from 365 Equipment located at 125 E. Oakton. The representative states they are a subsidiary of Pepper Construction and will be leasing to Pepper Construction job sites and built a showroom for outside customers to view equipment. The majority of equipment rentals are small tools. Most things offered in Des Plaines will be small tools. The Barrington location is larger and will keep that yard. As it pertains to the text amendment, it is mostly small tools that will be stored.

Chairman Szabo asks about the Barrington location. The representative states their current location is in Barrington and hidden away so they are interested in this Des Plaines Location. Chairman Szabo asks about who will be rented to. The representative says 17% of the business is outside customers, the rest is Pepper Construction to expand their business.

Member Weaver makes a motion to recommend approval of the text amendment as written by staff, seconded by Member Veremis.

AYES:Weaver, Saletnik, Veremis, Fowler, SzaboNAYS:NoneABSTAIN:None

MOTION CARRIED

CITY OF DES PLAINES

ORDINANCE Z - 11 - 24

AN ORDINANCE AMENDING THE TEXT OF THE DES PLAINES ZONING ORDINANCE REGARDING EQUIPMENT RENTAL AND LEASING.

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

WHEREAS, the "Des Plaines Zoning Ordinance of 1998," as amended ("Zoning Ordinance"), is codified as Title 12 of the City Code of the City of Des Plaines ("City Code"); and

WHEREAS, after a review of the Zoning Ordinance, the City desires to amend the Zoning Ordinance to update the definitions for certain uses related to the rental and leasing of equipment and update and clarify in what zoning districts the uses are allowed as permitted and conditional uses ("*Proposed Amendments*"); and

WHEREAS, a public hearing by the PZB to consider the Proposed Amendments was duly advertised in the *Des Plaines Journal* on May 8, 2024, and held by the PZB on May 28, 2024; and

WHEREAS, the PZB voted 5-0 to recommend approval of the Proposed Amendments; and

WHEREAS, the PZB forwarded its recommendation in writing to the City Council on May 29, 2024; and

WHEREAS, the City Council has considered the factors set forth in Section 12-3-7.E, titled "Standards for Amendments," of the Zoning Ordinance; and

WHEREAS, the City Council has determined that it is in the best interest of the City to adopt the Proposed Amendments and amend the Zoning Ordinance as set forth in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

<u>SECTION 1.</u> <u>RECITALS.</u> The recitals set forth above are incorporated herein by reference and made a part hereof.

<u>SECTION 2.</u> FINDING OF COMPLIANCE. The City Council finds that consideration of the Text Amendments complies with the provisions of Section 12-3-7 of Zoning Ordinance.

Additions are bold and double-underlined; deletions are struck through.

SECTION 3. COMMERCIAL DISTRICTS USE MATRIX. Sub-section 12-7-3.K, titled "Commercial Use Matrix", of Section 12-7-3, titled "Commercial District Regulations," of Chapter 7, titled "Districts," the Zoning Ordinance is hereby amended to read as follows:

"12-7-3: COMMERCIAL DISTRICT REGULATIONS.

K. Commercial Use Matrix:
TABLE 3
COMMERCIAL DISTRICTS USE MATRIX
P = Permitted use
C = Conditional use permit required

Uses	C-1	C-2	C-3	C-4	C-5	C-6	C-7
	*	*	*	-			
Hotels		С	Р	С	Р	Р	Р
Leasing/rental agents, <u>small</u> equipment			<u>C</u>	<u>C</u>			
Leasing/rental agents, vehicles (non-moving)			Р		Р		
*		*		*"			

<u>SECTION 4.</u> <u>MANUFACTURING DISTRICTS USE MATRIX</u>. Sub-section 12-7-4.G, titled "Manufacturing Use Matrix", of Section 12-7-4, titled "Manufacturing District Regulations," of Chapter 7, titled "Districts," the Zoning Ordinance is hereby amended to read as follows:

"G. Manufacturing Use Matrix:

TABLE 5

MANUFACTURING DISTRICTS USE MATRIX

P = Permitted use

C = Conditional use permit required

*

Uses	M-1	M-2	M-3
* * *			
Grocery retail	С	С	
Leasing/rental agents, small equipment	<u>P</u>	<u>P</u>	
Leasing/rental agents, large equipment	<u>C</u>	<u>C</u>	
Leasing/rental agents, vehicles (non-moving)	С	Р	
Leasing/rental agents, moving vehicles	Р	Р	

Additions are bold and double-underlined; deletions are struck through.

*

*"

SECTION 5. DEFINITION OF TERMS. Section 12-13-3, titled "Definition of Terms", of Chapter 13, titled "Definitions," the Zoning Ordinance is hereby amended to read as follows:

*

*

"12-13-1: DEFINITIONS GENERALLY:

*

The terms and words defined in this chapter shall have the meanings herein ascribed to them.

LEASING/RENTAL AGENTS, SMALL EQUIPMENT: An establishment, the principal use or purpose of which is the rental of equipment which includes, without limitation, the following general items: (i) personal hand and power tools;: (ii) small-scale air compressors;: (iii) trailers with one thousand nine hundred (1,900) 1.900-pound capacity or less; (iv) lawn and garden equipment; (v) residential generators; (vi) floor and carpet cleaners; (vii) heaters, and fans; (viii) ladders; (ix) painting equipment; (x) and wallpaper equipment and (xi) party/event equipment. "Leasing/rental agents, small equipment" doesshall-not include any use otherwise listed specifically in a zoning district as a permitted or conditional use. The display of motor vehicles for lease shall be allowed in all required yards but may not be in conflict with other provisions of this title. All small rental equipment must be stored indoors at all times either in a showroom or storage area in compliance with the other provisions of this title. This use shall follow the off-street parking regulations for motor vehicle sales and vehicle leasing/rental agent establishments to accommodate employee, guest, and related vehicle parking.

LEASING/RENTAL AGENTS. LARGE EOUIPMENT: An establishment. the principal use or purpose of which is the rental of large commercial equipment including, without limitation, the following example items: (i) aerial equipment such as cranes, boom lifts, scissor lifts, and material lifts; (ii) air equipment such as large-scale portable or stationary air compressors; (iii) compaction equipment such as large-scale soil or pavement roller machinery; (iv) earth-moving equipment such as excavators, loaders, skid steers, bulldozers, backhoes, and graders; (v) material handling equipment such as forklifts and telehandlers; (vi) roadwork equipment such as arrow or message board panels and road paving/maintenance machinery; (vii) trenching equipment such as trenchers and trench boxes; (viii) miscellaneous equipment such as utility task vehicles, tractors, trailers in excess of 1,900-pound capacity, commercial generators, and portable welding machines. "Leasing/rental agents, large equipment" does not include any use otherwise specifically listed in a zoning district as a permitted or conditional use. The display of large equipment for lease is only allowed indoors or in the rear yard and must comply with and may not conflict with the other provisions of this title. The parking requirements for this use to accommodate employee, guest, and related vehicle parking are the same as the off-street parking regulations for motor vehicle sales and vehicle leasing/rental agent establishments.

Additions are bold and double-underlined; deletions are struck through.

SECTION 6. SEVERABILITY. If any paragraph, section, clause, or provision of this Ordinance is held invalid, the remainder shall continue in full force and effect without affecting the validity of the remaining portions of the Ordinance.

*

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form according to law.

PASSED this ______ day of ______, 2024.

APPROVED this ______ day of ______, 2024.

VOTE: Ayes_____ Absent_____

*

MAYOR

*"

ATTEST:

CITY CLERK

Published in pamphlet form this _____ day of _____, 2024.

Approved as to form:

CITY CLERK

DP-Ordinance Related to Equipment Rental and Leasing

Peter M. Friedman, General Counsel



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date:	June 6, 2024
To:	Dorothy Wisniewski, City Manager
From:	Samantha Redman, Senior Planner
Cc:	Jeff Rogers, AICP, Director of Community and Economic Development
Subject:	Zoning Text Amendments Regarding the I-1 Institutional Zoning District

Issue: Consider Zoning Ordinance amendments to: (i) define "Institutionally Zoned Assembly Uses" in Section 12-13-3; (ii) amend the use matrix in Section 12-7-5.A.6 to allow "institutionally zoned assembly uses"; (iii) amend footnote 2 in Section 12-7-5.A.6 to allow restaurants on the same zoning lot as assembly uses; and (iv) amend off-street parking requirements in Section 12-9-7 for assembly uses.

PIN:	Citywide
Petitioner:	City of Des Plaines, 1420 Miner Street, Des Plaines, IL 60016
Case Number:	#24-020-TA

Background

All amendments proposed are included within the Proposed Amendments attachment. The purpose of the amendments surrounds how assembly uses including commercial theaters, banquet halls, community centers, membership organizations, churches, synagogues, temples, meeting houses, mosques, or other places of worship are treated within the I-1 Institutional District. The proposed amendments aim to broaden the range of assembly uses permitted in the I-1 district, clarify entitlements and parking requirements, and introduce restaurants as a possible land use associated with additional land use types.

Institutional Zoning District History and Overview

The Institutional Zoning District (I-1) has existed since the 1960 Zoning Ordinance and received some simplifications in language with the 1998 Zoning Ordinance update, but the purpose and regulations have remained relatively consistent throughout time. Per Section 12-7-5.A.1, the Institutional District is, "designed to recognize the public or semipublic nature of the institutional district and to provide guidelines for their continued use and future development. The I-1 institutional district shall provide protection for existing institutional facilities by prohibiting the encroachment of noncompatible uses." The table of permitted uses in the section attempts to carry out this purpose.

Permitted uses in the I-1 district have remained largely consistent since the 1960 Zoning Ordinance, with the exception of massage establishments added as a conditional use in 2013 and restaurants permitted in select situations in 2022. Below is a table from Section 12-7-5 of the Code listing the uses currently allowed within the I-1 district.

Use	I-1
Assisted living facility	Р
Cemetery, mausoleums, and crematoriums	Р
Colleges and universities	Р
Commercial indoor recreation	С
Commercial outdoor recreation	С
Congregate housing	Р
Convents and monasteries	Р
Forest preserves	Р
Government offices	Р
Hospitals	Р
Institutional headquarters, educational, professional, and religious	Р
Massage establishment	C^1
Offices	Р
Parks	Р
Places of worship	Р
Planned developments	С
Public utilities	С
Rectories and parish houses	Р
Restaurants	\mathbf{P}^2
Schools, private - elementary and high school	Р
Schools, public - elementary and high school	Р

1. When located on the same zoning lot as a hospital or medical facility

2. When located on the same zoning lot as a lawfully established commercial indoor or outdoor recreation, college/university, or park uses.

Below is a table of select bulk regulations for this zoning district:

	Requirement	
Maximum height	Adjacent nonresidential – 100 ft	
	Adjacent residential – 45 ft plus 5 ft for each 10 ft of additional	
	setback provided	
Minimum front yard	50 ft	
Minimum side yard	25 ft	
Minimum rear yard	50 ft	
Minimum lot size	2 acres	
Maximum lot coverage	40%	
Spacing of buildings	Lots of < 4 acres: No more than one principal building	
	Lots of \geq 4 acres: One principal building per 2 acres of land. All	
	buildings must be 25 feet apart	

Proposed Amendment to the Definition of Assembly Use

This text amendment seeks to clarify assembly uses within the I-1 District. In 2018, the Zoning Ordinance was amended to establish regulations surrounding assembly uses within residentially and commercially zoned properties. "Place of worship" was removed from the use matrix of commercial and residential zoning and reclassified with other similar uses under "residentially zoned assembly use" and "commercially zoned assembly use". The I-1 district was unchanged.

In 2018, definitions were added for residentially zoned and commercially zoned assembly uses. Each are currently defined as follows:

- COMMERCIALLY ZONED ASSEMBLY USES: A use that is primarily for the purpose of the assembly of people, which can contain a combination of uses that take place in both principal and accessory structures. Such uses include: commercial theater, banquet halls, nightclubs, church, synagogue, temple, meeting house, mosque, or other place of worship.
- RESIDENTIALLY ZONED ASSEMBLY USES: A use that is primarily for the purpose of the assembly of people for a non-commercial purpose, which can contain a combination of uses that take place in both principal and accessory structures. Such uses include: community center, membership organizations, church, synagogue, temple, meeting house, mosque, or other place of worship.

Staff proposes the following definition for uses operating in the institutional district:

INSTITUTIONALLY ZONED ASSEMBLY USES: A use that is primarily for the purpose of the assembly of people, which can contain a combination of uses that take place in both principal and accessory structures. Such uses include: commercial theaters, banquet halls, event spaces, churches, synagogues, temples, meeting houses, mosques, or other places of worship. Such uses shall adhere to the off street parking requirements under "assembly uses".

The definition is similar to the commercially zoned assembly use definition but excludes the term "nightclub". All other example uses align with the types of uses that may be expected within the Institutional District Use Matrix, such as a park, house of worship, or college/university. Adding this definition will consolidate the existing "house of worship" use into the new "assembly use" definition and also expand the range of uses available in the institutional district to match the types of activities that may be present in this zoning district.

Proposed Amendment to Assembly Use Off-Street Parking Requirements

An additional amendment proposes to expand the parking requirements in Section 12-9-7 – Off-Street Parking to apply to the new definition of "institutionally zoned assembly uses". Presently, there are parking requirements for places of worship established prior to the adoption of the 2018 text amendments that established commercially and residentially zoned assembly uses. The places of worship parking requirement is dependent on the number of seats within the place of assembly. The proposed amendments, as noted below, remove this section and apply the same parking requirement to all assembly uses, regardless of zoning. This amendment treats all assembly uses equally in terms of required parking and ensures facilities without affixed seating are providing adequate parking for their use.

Section 12-9-7: OFF STREET PARKING REQUIREMENTS

A second by years	
Assembly uses:	
Residentially zoned assembly uses and commercially zoned \underline{A} ssembly uses in any zoning district shall have the following parking requirements applied in each specific use within the zoning lot. If the use is not listed below, then refer to the regulations from other portions of the off street parking requirement matrix:	
Community centers, banquet halls and membership organizations	1 space for every 200 square feet of gross activity area
Places of worship and commercial theaters	1 space for every 5 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices) which are to be occupied simultaneously
	In cases where there is no affixed seating, 1 space shall be provided for every 60 square feet of floor area
For places of worship established prior to adoption hereof, the parking standard shall only apply in cases where additions are made to the existing facility. The standard for the existing structure shall be:	1 space for each 10 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices) which are to be occupied simultaneously

Proposed Amendment to Allow Assembly Uses

The proposed amendment to Section 12-7-5 removes "places of worship" and replaces it with the broader range of options of "assembly use". Upon review of the variety of uses permitted within the I-1 district, there are many that may incorporate an "assembly use", including event spaces at park district properties, places of worship, or other community centers.

Within the R-1 and R-2 zoning districts, assembly uses are permitted as a conditional use if they are over 1 acre and have frontage along a collector or arterial street. This footnote, added with the 2017 amendment, is intended to prevent smaller assembly uses with insufficient area and access to be located within neighborhoods. Assembly uses are also a conditional use within two commercial districts – C-3, General Commercial and C-5, Central Business District – without any restrictions associated with size or adjacency to roadway. Currently, Places of Worship are permitted by right in the I-1 zoning district. However, as proposed a conditional use would be required in certain circumstances. Refer to proposed amendment language below.

Section 12-7-5: SPECIAL DISTRICTS REGULATIONS

***	***
Places of worship Institutionally Zoned Assembly Uses (located along an arterial roadway)	Р
<u>Institutionally Zoned Assembly Uses (not located along an arterial roadway)</u>	С
***	***

Rationale for classification of Assembly Use as "Conditional" versus "Permitted"

As discussed, assembly uses are currently a conditional use in select commercial and residential districts; these amendments do not seek to change any requirements outside of the I-1 district. Staff reviewed conditional use ordinances for assembly uses throughout Des Plaines since 2018 and noted the most common conditions of approval and discussion items were related to three items: residential adjacency, parking, and traffic impact.

Creating Non-Conformities

The intent with providing an avenue for permitted by right assembly uses rather than requiring all to be conditional uses is to prevent creating a significant quantity of non-conforming properties. If a zoning code is adopted after the establishment of a use that is stricter than the previous code (i.e. if a conditional use is required for all assembly uses within the I-1 district), then the property is constrained by Section 12-5-5 Nonconforming Uses, limiting expansion of facilities, structural alteration, or the movement of principal structures.

For example, if an amendment was adopted and a conditional use was now required for an assembly use and an existing place of worship without a prior conditional use approval chose to relocate a building on the property, they would need to undergo the conditional use entitlement process, requiring City Council approval. In contrast, if permitted by right, the relocation of the building would still be required to meet all applicable zoning and building codes but would not be required to receive conditional use approval.

Residential Adjacency

Compared to residential and commercial parcels, institutionally zoned parcels are typically larger and both require and provide a greater amount of open space surrounding buildings. The I-1 district requires a property to be at least two acres and limits building height when adjacent to residential. Setbacks from property lines are substantially larger than most zoning districts, requiring a 50-foot front yard setback, a 25-foot side yard setback, and a 50-foot rear yard setback. Additional screening is required by Section 12-10-9 Landscape Buffers for any institutional districts abutting residential districts or uses, including a landscape buffer and fence. Currently parking requirements only apply to residentially or commercially zoned assembly uses. Combined, these requirements provide an additional buffer from residential properties that is not present where commercially and residentially zoned properties seek to operate an assembly use.

Additionally, hours of operation are a common condition of approval within the existing assembly use conditional use ordinances within the City. The hours of operation conditions are intended to limit nuisance to neighborhoods, particularly residential neighborhoods, past a certain time. The noise ordinance in Section 6-2-7 Noise establishes quiet hours generally between 10 p.m. and 7 a.m. This requirement limits the decibels of noise that originate from a use and must be followed regardless of whether an ordinance grants a specific condition of approval restricting noisy activity during this timeframe. This section of the municipal code would provide protections if any permitted assembly use exceeds noise regulations.

Parking

The amendments propose to improve the parking requirements as well, expanding the required off-street parking requirements to apply equally across residentially, commercially, and institutionally zoned assembly uses and providing avenues to limit the burden on parking capacity along neighborhood streets where sufficient off-street parking is unavailable on the site of an institutionally zoned assembly use.

Traffic

The amendments propose institutionally zoned assembly uses adjacent to an arterial roadway be considered a permitted use and requiring a conditional use for this use along all other types of roadways. The term "arterial" applied to a roadway is a functional classification established by Federal Highway Administrator (FHWA) and other transportation agencies. Functional roadway classifications take into consideration the location, traffic volume, access points, and other criteria to determine how a roadway should be designed and the resources that should be allocated to it.¹ An arterial is a roadway with high mobility and designed to accommodate significantly more traffic than a collector or local roadway. For example, most segments of Rand Road and Northwest Highway are arterial roadways, while Howard Avenue adjacent to Lake Park, including the new Foxtail on the Lake restaurant, is a local road. Local roads commonly travel through neighborhoods and are not designed to accommodate the same level of traffic as an arterial roadway.

For institutionally zoned properties along arterial roadways, it can be reasoned that sufficient roadway access and capacity can be provided to accommodate the higher traffic volumes of an assembly use. In contrast, it is advisable to consider on a case-by-case basis an assembly use along other classifications of roadways not designed for this traffic impact, which could be accomplished with a conditional use process.

The Institutionally Zoned Properties Map Attachment provides the location of each I-1 property and all interstate and arterial roadways. The attachment notes most I-1 properties are along an arterial roadway, with the exception of three locations that are within neighborhoods on local roads. If an assembly use is expanded or proposed on any of these properties, such a use would require a conditional use if these amendments were adopted. The conditional use review process would allow consideration of whether adequate facilities exist to support the use without creating an unnecessary burden on the transportation network surrounding the properties.

Restaurant Uses in I-1 Zoning History and Overview

In 2022, an amendment to the Institutional Zoning district was approved to allow restaurants in connection with recreational or educational uses. This amendment provided the zoning route necessary for the adaptive reuse of a church at Lake Park to be transformed into Foxtail at the Lake. Interest has been expressed from Shrine of Our Lady of Guadalupe to provide a cafeteria facility (refer to Letter of Support attachment). The cafeteria and tortilleria use is proposed to be open to attendees and the public. This type of cafeteria use is common with many assembly uses, including catholic shrines.

The restaurant definition below does note that in certain circumstances, a cafeteria or lunchroom may be considered incidental to the principal use and is not considered a "restaurant". However, if the cafeteria is open to the public and does not require interaction with the principal use (assembly use) on the property, it is interpreted this would not be "incidental" to the principal use and would need to be classified as a permitted use for a restaurant in this zoning district.

RESTAURANT: An establishment whose principal business is the sale of edible, prepared foodstuffs and/or beverages for consumption on or off the premises.... Lunchrooms, cafeterias, and coffee shops providing service intended for employees, students, and guests within an educational, office, medical, or industrial building, are not, only for purposes of this definition, considered to be restaurants, but rather uses incidental to the permitted uses (Section 12-13-3).

¹ Federal Highway Administration, "Highway Functional Classification Concepts, Criteria and Procedures 2023 Edition", February 2023,

https://gis.penndot.pa.gov/BPR pdf files/Documents/Traffic/Highway Statistics/2023 FHWA Functional Classification Guidel ines.pdf

Proposed Amendment to Allow Restaurant Uses Associated with the Assembly Use

The proposed amendment builds from the 2022 amendment, expanding the ability for assembly uses to contain restaurants. See below for proposed language for Section 12-7-5.

Restaurants	\mathbb{P}^2	

2. When located on the same zoning lot as lawfully established commercial indoor or outdoor recreation, college/university, or park, or assembly uses.

Planning and Zoning Board (PZB) Recommendation: The PZB held a public hearing on May 28, 2024, to consider the requests. The PZB voted 5-0 to recommend that City Council approve the Text Amendment request. The rationale for the PZB's vote is captured in the attached minutes from the May 28, 2024 meeting.

City Council Action: Pursuant to Section 12-3-7.D.4 of the Zoning Ordinance, the Council has the final authority on the Text Amendment request. The Council may approve, approve modifications, or deny Ordinance Z-12-24, which includes the requested text amendments.

PZB Procedure and Recommended Conditions: Under Section 12-3-7.C.3 of the Zoning Ordinance, the PZB has the authority to recommend that the City Council approve, approve with modifications, or deny the above-mentioned amendments. City Council has final authority on the proposal.

Attachments:

Attachment 1: Proposed Amendments Attachment 2: Institutionally Zoned Properties Map Attachment 3: Letter of Support from Shrine of Our Lady of Guadalupe Attachment 4: Chairman Szabo PZB Recommendation Letter Attachment 5: Excerpt of Approved Minutes from the May 28, 2024 PZB Meeting

Ordinance Z-12-24

Section 12-7-5

***	***
Places of worship Institutionally Zoned Assembly Uses (located along an arterial roadway)	Р
Institutionally Zoned Assembly Uses (not located along an arterial roadway)	С
***	***
Restaurants	P ²

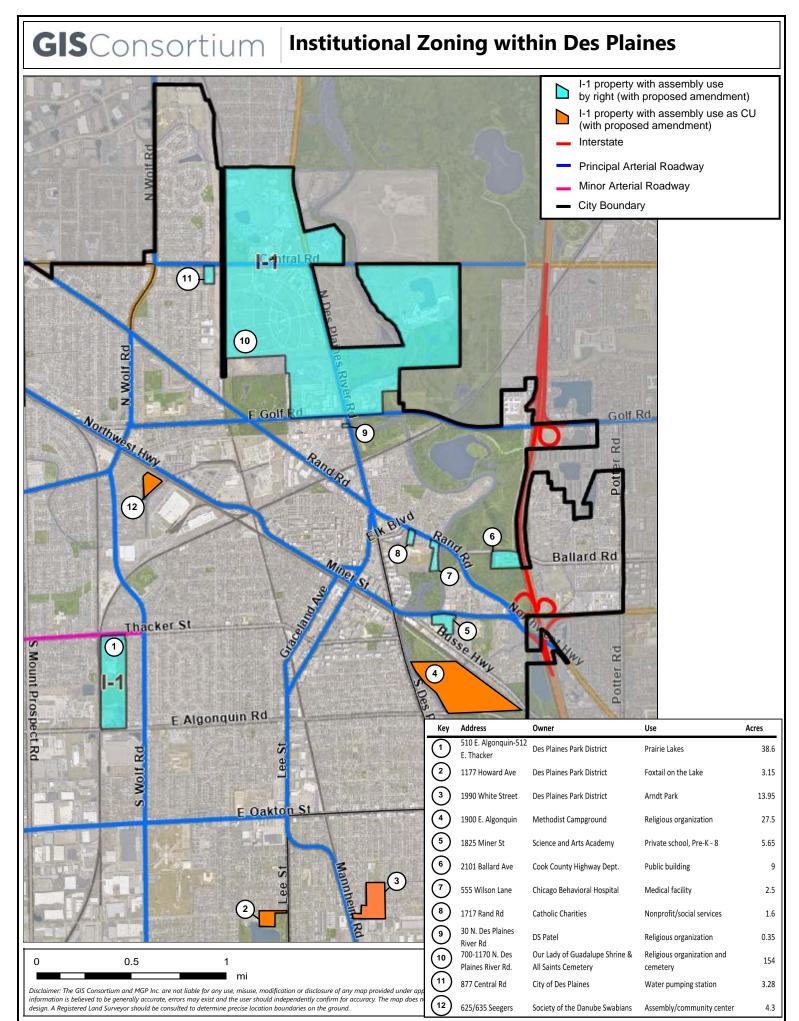
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Section 12-9-7

Assembly uses:	
Residentially zoned assembly uses and commercially zoned <u>A</u> ssembly uses in any zoning district shall have the following parking requirements applied in each specific use within the zoning lot. If the use is not listed below, then refer to the regulations from other portions of the off street parking requirement matrix:	
Community centers, banquet halls and membership organizations	1 space for every 200 square feet of gross activity area
Places of worship and commercial theaters	1 space for every 5 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices) which are to be occupied simultaneously
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Section 12-13-3

INSTITUTIONALLY ZONED ASSEMBLY USES: A use that is primarily for the purpose of the assembly of people, which can contain a combination of uses that take place in both principal and accessory structures. Such uses include: commercial theaters, banquet halls, event spaces, churches, synagogues, temples, meeting houses, mosque, or other place of worship. Such uses shall adhere to the off street parking requirements under "assembly uses".



Attachment 2





Samantha Redman Senior Planner City of Des Plaines 1420 Miner Street Des Plaines, IL 60016

May 23, 2024

Dear Samantha Redman,

I and the community at the Shrine of Our Lady of Guadalupe are extremely thankful for the hard work Wheeler Kearns Architects has done on our behalf and even more so to the response from the City of Des Plaines in regard to the project of repurposing the Ziggie Administrative Building of Maryville Academy to the new Cafeteria/ Tortilleria.

The Mission of the Shrine is served by providing spaces to worship and prayer, educational opportunities, and a space to eat for all pilgrims who come to visit. The Shrine effectively provides excellent service in completing the first two goals, but now we seek to move forward with an analytical process that will help us reach the third. The project is a response to the thousands of pilgrims who come to visit us every week, yet need more bathrooms, a place to eat that includes HVAC, and other accommodations.

The project is an extension of the Ministry of the Shrine of Our Lady of Guadalupe where the safety and security of all our pilgrims is of the utmost importance. Opening this opportunity will also provide resources that will help us continue beautifying and developing services for the community. Therefore, we are seeking an amendment allowing the properties with assemblies to be able to have restaurants in the zoning district.

Sincerely,

Very Rev. Esequiel Sanchez Rector

1170 N. RIVER ROAD, DES PLAINES, IL 60016 | (847) 294-1806

WWW.SANTUARIOGUADALUPE.ORG

Attachment 3

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May 29, 2024

Mayor Goczkowski and Des Plaines City Council CITY OF DES PLAINES

Subject: Planning and Zoning Board, Text Amendment for the I-1 Zoning District, 24-020-TA

RE: Consideration of a Text Amendment to Define and Expand Assembly and Restaurant Uses in the I-1, Institutional Zoning District

Honorable Mayor and Members of the Des Plaines City Council:

The Planning and Zoning Board (PZB) held a public hearing on May 28, 2024 to consider the request.

- 1. CED staff summarized the staff report with slides providing an overview of the existing Institutional (I-1) zoning district, assembly uses, and the rationale for amendments. Staff noted two separate inquiries from properties within the I-1 district were requesting uses (restaurant and banquet facility) that are currently not permitted within this zoning district. Staff provided amendments for adding a definition for institutionally zoned assembly uses and described the amendments allowing the use permitted by right along arterial roadways and a conditional use on other roadway classifications. Staff described the changes to the parking requirement and the intent to ensure all assembly uses meet the same parking requirements, regardless of zoning. Staff also described the restaurant amendment, allowing restaurants to be associated with assembly uses. Staff described each of the proposed amendments and the rationale surrounding each.
- 2. Member Fowler asked about the map and why a water pumping station is within the I-1 zoning district. Staff stated they did not know the history behind that property. Member Weaver asked if the changes apply to commercially and residentially zoned assembly uses; staff stated no changes are proposed for these zoning districts, these changes apply only to the I-1 district. Member Weaver asked about why a fifty-foot front yard setback is required for all I-1 zoned properties. Staff stated they did not know the rationale behind this specific number, but the bulk standards for this zoning district have been consistent since the 1960 Zoning Ordinance. Member Veremis asked if the banquet hall proposed at Foxtail on the Lake would require a conditional use. Staff stated yes, a conditional use would be required since it is along a local road rather than an arterial road.
- 3. The Board invited a park district representative to discuss their proposed use at Foxtail on the Lake. The representative stated the park district is always looking for additional event spaces to rent and this area already exists within the building to allow for this type of use. Member Fowler asked about the maximum capacity for rentals within this building and park district facilities.
- 4. No one from the public spoke regarding this request.
- 5. The PZB voted 5-0 to recommend that City Council approve the proposed text amendments as drafted by staff.

Respectfully submitted,

James S. Szalo

James Szabo, Des Plaines Planning and Zoning Board, Chairman Cc: City Officials/Aldermen



DES PLAINES PLANNING AND ZONING BOARD MEETING May 28, 2024 MINUTES

2. Address: Citywide

Case Number: 24-020-TA

The City is proposing text amendments to the Zoning Ordinance related to the Institutional Zoning District.

Petitioner: City of Des Plaines, 1420 Miner Street, Des Plaines, IL 60016

Issue: Consider Zoning Ordinance amendments to: (i) define "Institutionally Zoned Assembly Uses" in Section 12-13-3; (ii) amend the use matrix in Section 12-7-5.A.6 to allow "institutionally zoned assembly uses"; (iii) amend footnote 2 in Section 12-7-5.A.6 to allow restaurants on the same zoning lot as assembly uses; and (iv) amend off-street parking requirements in Section 12-9-7 for assembly uses.

PIN: Citywide

Case Number: #24-020-TA

Background

All amendments proposed are included within the Proposed Amendments attachment. The purpose of the amendments surrounds how assembly uses including commercial theaters, banquet halls, nightclubs, community centers, membership organizations, churches, synagogues, temples, meeting houses, mosques, or other places of worship are treated within the I-1 Institutional District. The proposed amendments aim to broaden the range of assembly uses permitted in the I-1 district, clarify entitlements and parking requirements, and introduce restaurants as a possible land use associated with additional land use types.

Institutional Zoning District History and Overview

The Institutional Zoning District (I-1) has existed since the 1960 Zoning Ordinance and received some simplifications in language with the 1998 Zoning Ordinance update, but the purpose and regulations have remained relatively consistent throughout time. Per Section 12-7-5.A.1, the Institutional District is, "designed to recognize the public or semipublic nature of the institutional district and to provide guidelines for their continued use and future development. The I-1 institutional district shall provide protection for existing institutional facilities by prohibiting the encroachment of noncompatible uses." The table of permitted uses in the section attempts to carry out this purpose.

Permitted uses in the I-1 district have remained largely consistent since the 1960 Zoning Ordinance, with the exception of massage establishments added as a conditional use in 2013 and restaurants permitted in select situations in 2022. Below is a table from Section 12-7-5 of the Code listing the uses currently allowed within the I-1 district.

	Use	I-1
	Assisted living facility	Р
	Cemetery, mausoleums, and crematoriums	Р
	Colleges and universities	Р
	Commercial indoor recreation	С
	Commercial outdoor recreation	С
	Congregate housing	Р
	Convents and monasteries	Р
	Forest preserves	Р
	Government offices	Р
	Hospitals	Р
	Institutional headquarters, educational, professional, and religious	Р
	Massage establishment	C ¹
	Offices	Р
	Parks	Р
	Places of worship	Р
	Planned developments	С
	Public utilities	С
	Rectories and parish houses	Р
		<u> </u>

2

Restaurants	\mathbf{P}^2
Schools, private - elementary and high school	Р
Schools, public - elementary and high school	Р

1. When located on the same zoning lot as a hospital or medical facility

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Below is a table of select bulk regulations for this zoning district:

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This text amendment seeks to clarify assembly uses within the I-1 District. In 2018, the Zoning Ordinance was amended to establish regulations surrounding assembly uses within residentially and commercially zoned properties. "Place of worship" was removed from the use matrix of commercial and residential zoning and reclassified with other similar uses under "residentially zoned assembly use" and "commercially zoned assembly use". The I-1 district was unchanged.

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¹ Federal Highway Administration, "Highway Functional Classification Concepts, Criteria and Procedures 2023 Edition", February 2023,

https://gis.penndot.pa.gov/BPR_pdf_files/Documents/Traffic/Highway_Statistics/2023_FHWA_Functional_Classification_Guid_elines.pdf

contrast, it is advisable to consider on a case-by-case basis an assembly use along other classifications of roadways not designed for this traffic impact, which could be accomplished with a conditional use process.

The Institutionally Zoned Properties Map Attachment provides the location of each I-1 property and all interstate and arterial roadways. The attachment notes most I-1 properties are along an arterial roadway, with the exception of three locations that are within neighborhoods on local roads. If an assembly use is expanded or proposed on any of these properties, such a use would require a conditional use if these amendments were adopted. The conditional use review process would allow consideration of whether adequate facilities exist to support the use without creating an unnecessary burden on the transportation network surrounding the properties.

Restaurant Uses in I-1 Zoning History and Overview

In 2022, an amendment to the Institutional Zoning district was approved to allow restaurants in connection with recreational or educational uses. This amendment provided the zoning route necessary for the adaptive reuse of a church at Lake Park to be transformed into Foxtail at the Lake. Interest has been expressed from Shrine of Our Lady of Guadalupe to provide a cafeteria facility (refer to Letter of Support attachment). The cafeteria and tortilleria use is proposed to be open to attendees and the public. This type of cafeteria use is common with many assembly uses, including catholic shrines.

The restaurant definition below does note that in certain circumstances, a cafeteria or lunchroom may be considered incidental to the principal use and is not considered a "restaurant". However, if the cafeteria is open to the public and does not require interaction with the principal use (assembly use) on the property, it is interpreted this would not be "incidental" to the principal use and would need to be classified as a permitted use for a restaurant in this zoning district.

RESTAURANT: An establishment whose principal business is the sale of edible, prepared foodstuffs and/or beverages for consumption on or off the premises.... Lunchrooms, cafeterias, and coffee shops providing service intended for employees, students, and guests within an educational, office, medical, or industrial building, are not, only for purposes of this definition, considered to be restaurants, but rather uses incidental to the permitted uses (Section 12-13-3).

Proposed Amendment to Allow Restaurant Uses Associated with the Assembly Use

The proposed amendment builds from the 2022 amendment, expanding the ability for assembly uses to contain restaurants. See below for proposed language for Section 12-7-5.

Restaurants	P^2

2. When located on the same zoning lot as lawfully established commercial indoor or outdoor recreation, college/university, or park, or assembly uses.

Standards for Text Amendments:

8

The following is a discussion of standards for zoning amendments from Section 12-3-7.E. of the Zoning Ordinance. Rationale for how the proposed amendments would satisfy the standards is provided. The PZB may use the statements below as its rationale or adopt its own.

1. Whether the proposed amendments are consistent with the goals, objectives, and policies of the comprehensive plan, as adopted and amended from time to time by the City Council;

The proposed text amendments provide clarity and consistency with how assembly uses are treated within the city and expand options for institutionally zoned properties. The Comprehensive Plan states that institutional uses are intended to "provide services to Des Plaines residents and the surrounding area. Institutional land uses include schools, libraries, community organizations, places of worship, and public facilities."² The objectives are met with these amendments, expanding the services and amenities that can be provided and creating clarity on how requirements for assembly uses should be treated on institutionally zoned parcels.

2. Whether the proposed amendments are compatible with current conditions and the overall character of existing development;

The amendments serve to clarify what uses are permitted within this zoning district and ensure all assembly uses are treated equally regardless of zoning district. The amendment allowing restaurants to be located within assembly uses in the I-1 district expands opportunities for these types of uses on their properties without creating incompatibilities with existing developments.

3. Whether the proposed amendments are appropriate considering the adequacy of public facilities and services available;

Refer to Rationale for Conditional versus Permitted Use for Assembly Use section of this report for information on how amendments contemplated the adequacy of public infrastructure. The amendment allowing a restaurant use is not anticipated to impact the adequacy of public facilities and services.

4. Whether the proposed amendments will have an adverse effect on the value of properties throughout the jurisdiction; and

Refer to Rationale for Conditional versus Permitted Use for Assembly Use section of this report for information on how the proposed amendments contemplated properties adjacent to these types of uses. The proposed amendments are anticipated to create clarity on how I-1 zoned properties can be used and take into consideration the potential impact of amendments on adjacent properties and the City overall.

5. Whether the proposed amendments reflect responsible standards for development and growth.

² Des Plaines Comprehensive Plan 2019, page 12

Institutional uses provide essential services to support a healthy, vibrant community. The amendments expand the potential uses available on an institutional parcel by creating the "assembly use" definition and allowing for restaurants if associated with an assembly use, creating additional avenues to provide services on these properties for members of the community.

PZB Procedure and Recommended Conditions: Under Section 12-3-7.C.3 of the Zoning Ordinance, the PZB has the authority to recommend that the City Council approve, approve with modifications, or deny the above-mentioned amendments. City Council has final authority on the proposal.

Meeting Discussion Summary:

Senior Planner Redman provides overview of the proposed text amendment for the Institutional Zoning District, specifically assembly and restaurant uses. The intent with this zoning district is to provide services to residents and visitors on public and semi-public lands.

There are two separate inquiries at the moment that are currently not allowed by our zoning ordinance in the I-1, Institutional zoning district. Shrine of Our Lady of Guadalupe is interested in opening a cafeteria on their property. Zoning code does not allow this type of restaurant use associated with an assembly use. The park district is interested in opening a banquet facility beneath The Foxtail on the Lake. This facility is classified as an assembly use which is currently not allowed within this Institutional District.

Senior Planner Redman provides a comprehensive overview of the staff report. Within the existing zoning ordinance, we allow residentially zoned assembly uses within all of our residential districts as a conditional use. Single-family and two-family zoned properties are a conditional use on residentially zoned sites of an acre or more with frontage on a collector or arterial street. Within certain commercial districts, specifically C-3 and C-5, assembly uses are allowed as a conditional use.

When the residential and commercial zoning sections were updated in 2018, places of worship was removed as a use and was reclassified with other assembly uses and added to the zoning ordinance. Senior Planner Redman is asking to expand this and allowing our institutional parcels to have a broader range of uses.

The amendments are not proposing a substantial change to the parking requirements. Recommended amendments would ensure consistency across all assembly uses, with the same parking requirements no matter the property's zoning.

Member Fowler asked why is the water pumping station on the list? Senior Planner Redman answered, she is unsure of the history. It is classified as a public facility and has been an institutionally zoned property for a very long time.

Member Weaver asked for clarification about whether these changes would be made to residentially and commercially zoned districts or the institutional district. Senior Planner Redman stated that all of the amendments would apply to the institutional district. The references to the residentially and commercially zoned assembly uses in the report and presentation were for reference only. Parking would not be affected. It would only affect parking on the institutional zoned properties.

Member Weaver asked why institutional districts have a 50 ft front yard setback. Senior Planner Redman responded that staff are unaware of any specific reason why 50 ft was chosen. For larger complexes, there are larger setbacks are required, but she is unsure of the history and context behind this requirement

Member Veremis asked if the Foxtail proposal will require conditional use because it is not along arterial roadway. Senior Planner Redman stated it would still be conditional use due to location in the neighborhood. Member Veremis also asked if the banquet room will be operated by thepark district or Foxtail. The Board invited the park district representative to speak.

Brian Panek, Des Plaines Park District representative clarified it would be operated by the park district. It is park district space. The district is in need of more space for functions. Downstairs will be able to fit up to 100 people. Plans for the future would include a yoga studio upstairs and music classes downstairs to be used as a combination of park district use and Foxtail restaurant. Downstairs there is also a concrete slab for walkout to the lake.

Member Fowler asked if there is a facility that holds over 100 people, expressing that has always been the limitation. Brian Panek answered that Prairie Lakes Mountain View Room 1,2, and 3 can hold up to 120 people but that is the largest space.

Member Weaver makes a motion to recommend approval of the text amendment as written by staff, seconded by Member Veremis.

AYES:Weaver, Saletnik, Veremis, Fowler, SzaboNAYES:NoneABSTAIN:None

MOTION CARRIED

11

CITY OF DES PLAINES

ORDINANCE Z - 12 - 24

AN ORDINANCE AMENDING THE TEXT OF THE DES PLAINES ZONING ORDINANCE REGARDING ASSEMBLY USES IN THE I-1, INSTITUTIONAL ZONING DISTRICT._____

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

WHEREAS, the "Des Plaines Zoning Ordinance of 1998," as amended ("Zoning Ordinance"), is codified as Title 12 of the City Code of the City of Des Plaines ("City Code"); and

WHEREAS, after a review of the Zoning Ordinance, the City desires to update and clarify regulations pertaining to assembly uses in the I-1 District ("*Proposed Amendments*"); and

WHEREAS, a public hearing by the PZB to consider the Proposed Amendments was duly advertised in the *Des Plaines Journal* on May 8, 2024, and held by the PZB on May 28, 2024; and

WHEREAS, the PZB voted 5-0 to recommend approval of the Proposed Amendments; and

WHEREAS, the PZB forwarded its recommendation in writing to the City Council on May 29, 2024; and

WHEREAS, the City Council has considered the factors set forth in Section 12-3-7.E, titled "Standards for Amendments," of the Zoning Ordinance; and

WHEREAS, the City Council has determined that it is in the best interest of the City to adopt the Proposed Amendment and amend the Zoning Ordinance as set forth in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

<u>SECTION 1.</u> <u>RECITALS.</u> The recitals set forth above are incorporated herein by reference and made a part hereof.

<u>SECTION 2.</u> FINDING OF COMPLIANCE. The City Council finds that consideration of the Text Amendments complies with the provisions of Section 12-3-7 of Zoning Ordinance.

SECTION 3. INSTITUTIONAL DISTRICT USE MATRIX. Sub-section 12-7-5.A.6, titled "Institutional District Use Matrix", of Section 12-7-5, titled "Institutional District," of Chapter 7, titled "Districts," the Zoning Ordinance is hereby amended to read as follows:

"12-7-5: SPECIAL DISTRICTS REGULATIONS.

6. Institutional Use Matrix:

TABLE 7

INSTITUTIONAL DISTRICT USE MATRIX

P = Permitted use

C = Conditional use permit required

Uses	I-1
* * *	
Places of worship Institutionally Zoned Assembly Uses (located along an arterial roadway)	Р
Institutionally Zoned Assembly Uses (not located <u>along an arterial roadway)</u>	С
* * *	
Restaurants	Р

2. When located on the same zoning lot as lawfully established commercial indoor or outdoor recreation, college/university, or park, <u>or institutionally zoned</u> <u>assembly</u> uses."

SECTION 4. OFF STREET PARKING REQUIREMENTS. Section 12-9-7, titled "Off Street Parking Requirements," of Chapter 9, titled "Off Street Parking and Loading Facilities," the Zoning Ordinance is hereby amended to read as follows:

"12-9-7: OFF STREET PARKING REQUIREMENTS:

The parking and loading requirements applicable in each district are set forth below:

Assembly uses:	
Residentially zoned assembly uses and commercially zoned <u>A</u> ssembly uses in any zoning district shall have the following parking requirements applied in each specific use within the zoning lot. If the use is not listed below, then refer to the regulations from other portions of the off street parking requirement matrix:	
Community centers, banquet halls and membership organizations	1 space for every 200 square feet of gross activity area

Places of worship and commercial theaters	1 space for every 5 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices) which are to be occupied simultaneously	
	In cases where there is no affixed seating, 1 space shall be provided for every 60 square feet of floor area	
For places of worship established prior to adoption hereof, the parking standard shall only apply in cases where additions are made to the existing facility. The standard for the existing structure shall be:	1 space for each 10 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices) which are to be occupied simultaneously	
* * *	* *	
* *	*''	

SECTION 5. DEFINITION OF TERMS. Section 12-13-3, titled "Definition of Terms", of Chapter 13, titled "Definitions," the Zoning Ordinance is hereby amended to read as follows:

"12-13-3: DEFINITION OF TERMS:

*

INSTITUTIONALLY ZONED ASSEMBLY USES: A use that is primarily for the purpose of the assembly of people, which can contain a combination of uses that take place in both principal and accessory structures. Such uses include: commercial theaters, banquet halls, event spaces, churches, synagogues, temples, meeting houses, mosque, or other place of worship. Institutional Zoned Assembly Uses do not include nightclubs. Such uses must adhere to the off street parking requirements under "assembly uses".

> * * *"

SECTION 6. SEVERABILITY. If any paragraph, section, clause, or provision of this Ordinance is held invalid, the remainder shall continue in full force and effect without affecting the validity of the remaining portions of the Ordinance.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form according to law.

[SIGNATURES ON FOLLOWING PAGE]

PASSED this ______ day of ______, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: Ayes_____ Absent_____

ATTEST:

MAYOR

CITY CLERK

Published in pamphlet form this _____ day of _____, 2024.

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Ordinance Related to Assembly Uses in the Institutional Zoning District



COMMUNITY AND ECONOMIC Development department

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date:June 10, 2024To:Dorothy Wisniewski, City ManagerFrom:Jeff Rogers, Director of Community and Economic Development ImageCc:Brooke Lenneman, Partner, Elrod Friedman, General CounselSubject:Consideration of a Resolution Approving a Subdivision Performance Security and Public
Improvement Agreement and Covenant for Lot 2 in the Bonk Subdivision at 2289 Webster

Issue: The applicant is requesting approval of an agreement and covenant deferring the remittance to the City of the required subdivision improvement bond and maintenance warranty for required infrastructure improvements associated with the future development of Lot 2 in the Bonk Subdivision until such time that a permit is submitted for the development of said Lot 2.

Background: On February 1, 2024 via R-55-24, the City Council approved a final plat of subdivision for the Bonk Subdivision to be comprised of two lots of record including one lot for an existing single-family detached residence at 2285 Webster Lane and a second lot for an existing vacant lot at 2289 Webster Lane.

Prior to the approval of the final subdivision, a zoning variation was approved to reduce the required lot width for both of the proposed Lots 1 & 2 from 55 feet to 50 feet.

The applicant's Final Plat shows the subdivision of the existing lot into two 9,341 square-foot, 50-foot-wide lots with a 25-foot building line. The property currently includes no easements, and the final plat does not propose any additional easements, but the plat notes utility lines including gas, water, and overhead electrical lines. The petitioner provided correspondence from ComEd and Nicor that no easements exist on the property for these utilities. Per correspondence between the petitioner and ComEd, easements may be required in the future for ComEd when a new residence is planned, but this location and size will be determined prior to approval of a building permit.

A 3,303-square-foot area (33.03 feet by 100.00 feet) along the frontage of the existing property is proposed to be dedicated to the city for public right-of-way comprising Webster Lane. The current property line extends into the area that is typically used for parkways and sidewalks along Webster Lane, creating a burden for the property owner in terms of maintenance and taxes, and reduces the ability for the city to easily maintain the street and the proposed parkway and public sidewalk.

Presently, there is no sidewalk or parkway in front of the property. The Preliminary Site Improvement Plan includes a 5-foot-wide sidewalk, parkway, and various other improvements including a driveway apron, storm sewer catch basins, water service, Buffalo box, PVC drain pipe, and appurtenances thereto. The required improvements were approved by the Director of Public Works and Engineering.

The applicant's civil engineer has provided an Engineer's Estimate of Probably Cost itemizing projected costs for these infrastructure improvements associated with a.) Lot 1, for which a financial security in the amount of 125% and a maintenance warranty in the amount of 10% would be provided in advance of the recording of the Final Plat of Subdivision and subsequent construction thereof; and b.) Lot 2, for which the applicant requests approval of an agreement and covenant to defer remittance of the financial security in the amount of 125% and a maintenance warranty in the amount of 10% until such time that a permit for a new single-family residence upon Lot 2 has been submitted.

If approved by the City Council, the agreement would be executed by the parties, the security and warranty for improvements upon Lot 1 would be collected, the subdivision plat would be recorded with the Cook County Clerk's Office, and subsequently the agreement deferring improvements and remittance of a financial security and maintenance warranty for required improvements associated only with Lot 2 would be recorded against Lot 2.

The applicant, Jean Bonk, 2285 Webster Ln, Des Plaines, IL 60018, requests approval of an agreement and covenant to defer remittance of the required subdivision improvement bond and maintenance warranty for required infrastructure improvements associated with the future development of Lot 2 in the Bonk Subdivision until such time that a permit is submitted for the development of said Lot 2. A record of the future obligations and required infrastructure improvements would be maintained in the Community & Economic Development Department for Lot 2 at 2289 Webster Lane to ensure the required infrastructure and associated subdivision improvement bond and maintenance warranty are collected prior to the issuance of a permit for any future new single-family residence upon Lot 2.

Each respective bond and/or warranty would be returned upon satisfaction of the terms and in accordance with the procedures and timelines stipulated in Sec. 13-2-8 of the City Code regarding the completion and acceptance of public improvements.

<u>**City Council Action:**</u> If the City Council agrees with the applicant's request to defer remittance of the subdivision improvement bond and maintenance warranty for the improvements serving Lot 2 until such time that a permit to construct a new residence upon Lot 2 is submitted, it may approve Resolution R-121-24 to authorize the execution and recording of an agreement and covenant against Lot 2.

Attachments: Attachment 1: R-55-24

Resolution R-121-24 Exhibit A: Agreement

CITY OF DES PLAINES

RESOLUTION R - 121 - 24

A RESOLUTION APPROVING A SUBDIVISION PERFORMANCE SECURITY AND PUBLIC IMPROVEMENT AGREEMENT AND COVENANT FOR LOT 2 IN THE BONK SUBDIVISION (2289 WEBSTER LANE).

WHEREAS, Jean Bonk ("*Owner*") is the owner of that certain parcel of real property commonly known as 2285 Webster Lane in the City ("*Subject Property*"); and

WHEREAS, on February 1, 2024, the City Council approved a final plat of subdivision titled "Final Plat of Bonk Subdivision," prepared by B.H. Suhr Company, consisting of one sheet, and with a final revision date of January 3, 2024 (*"Final Plat of Subdivision"*); and

WHEREAS, the Final Plat of Subdivision contemplates the subdivision of the Subject Property into two lots of record as follows: (i) Lot 1 to the north, which is improved with a single family home at 2285 Webster Lane; and (ii) Lot 2 to the south, which is currently unimproved at 2289 Webster Lane (*"Lot 2"*); and

WHEREAS, the Owner anticipates that Lot 2 will be developed with a single family home, but does not have immediate plans to complete the development; and

WHEREAS, pursuant to Title 13 of the City Code of the City of Des Plaines, as amended ("Subdivision Regulations"), the Owner is required to (i) construct certain public improvements required prior to the development of Lot 2 ("Required Public Improvements"); and (ii) submit a subdivision improvement bond and maintenance warranty to guarantee the performance and maintenance of the Required Public Improvements (collectively, the "Owner Obligations"); and

WHEREAS, the Owner submitted a request to delay the completion of the Owner Obligations until such time as a permit application is submitted to the City for the development of Lot 2 ("Owner's Request"); and

WHEREAS, the City Council has determined it is in the best interest of the City and the public to approve the Owner's Request and enter into a subdivision performance security and public improvement agreement and covenant ("*Agreement*") to set forth the City and the Owner respective rights and obligations regarding the completion of the Owner Obligations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des

Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as the findings of the City Council.

SECTION 2: APPROVAL, EXECUTION, AND RECORDATION OF

AGREEMENT. The Agreement is hereby approved substantially in the form attached to this Resolution as *Exhibit A*, and in a final form approved by the General Counsel. The City Manager and the City Clerk are hereby authorized and directed to sign the Agreement on behalf of the City. The City Manager is hereby authorized and directed to record the Agreement with the Office of the Cook County Recorder upon satisfactory completion of all administrative details relating thereto.

SECTION 3: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

EXHIBIT A

AGREEMENT

PREPARED BY: Elrod Friedman LLP 325 N. LaSalle Street, Suite 450 Chicago, Illinois 60654

AFTER RECORDING RETURN TO: City of Des Plaines 1420 Miner Street

Des Plaines, Illinois 60018 Attention: City Clerk

Subdivision Property Address: 2285 Webster Lane

Des Plaines, IL 60018 PIN: 09-29-302-042-0000

For Recorder's Use Only

SUBDIVISION PERFORMANCE SECURITY AND PUBLIC IMPROVEMENT AGREEMENT AND COVENANT

THIS SUBDIVISION PERFORMANCE SECURITY AND PUBLIC IMPROVEMENT

AGREEMENT AND COVENANT ("Agreement") is dated as of this ___ day of _____,

2024, by and between the CITY OF DES PLAINES, an Illinois home rule municipal corporation

("*City*"), and JEAN BONK (*"Owner"*).

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and

pursuant to the City's home rule powers, the parties hereto agree as follows:

SECTION 1: BACKGROUND.

A. The Owner is the record title owner of certain property consisting of 14,161 square feet, commonly known as 2285 Webster Lane, Des Plaines, Illinois, County of Cook, State of Illinois and identified as Property Identification Number (PIN) 09-29-302-042-0000 and legally described on *Exhibit A* attached to and made a part of this Agreement (*"Subdivision Property"*).

B. The Owner submitted to the City for approval a final plat of subdivision for the Subdivision Property titled "Final Plat of Bonk Subdivision," prepared by B.H. Suhr Company,

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\{00119293.1\}
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consisting of one sheet, and with a final revision date of January 3, 2024 (*"Final Plat of Subdivision"*), a copy of which is attached to and made a part of this Agreement as *Exhibit B*.

C. The Final Plat of Subdivision contemplates the subdivision of the Subdivision Property into two approximately 9,341-square-foot lots of record: (i) Lot 1 to the north, which is improved with a single family home and detached garage; and (ii) Lot 2, to the south, which is unimproved (*"Lot 2"*), which Lot 2 is legally described on *Exhibit A* attached to this Agreement.

D. The Owner anticipates that Lot 2 will be developed with a single family home in the future, but does not have immediate plans to move forward with such development.

E. Sections 13-1-3 and 13-2-8 of the City Code of the City of Des Plaines, as amended (*"City Code"*) requires a person who files a request for subdivision with the City to file (i) a performance and completion guarantee (subdivision improvement bond) in the amount of 125 percent of the City engineer's estimate of the improvements cost, which engineer's estimate (*"Engineer's Estimate of Cost"*) is attached to and made a part of this Agreement as *Exhibit C* (*"Performance Security"*); and (ii) a maintenance warranty in the amount of 10 percent of the Performance Security (*"Maintenance Warranty"*).

F. Section 13-3-2 of the City Code requires the Owner, as subdivider, to install certain public improvements related to Lot 2 to allow Lot 2 to be developed with a single family home, including (collectively, the *"Required Public Improvements"*) (collectively, the Performance Security, Maintenance Warranty, and Required Public Improvements are the *"Delayed Obligations"*):

- 1. Approximately 197 linear feet of 8-inch PVC SDR-26 Storm Sewer;
- 2. Three catch basins (24-inch diameter);
- 3. Nine linear feet of Granular Trench Backfill;
- 4. Approximately 50 linear feet of 6-inch PVC SDR-21 via directional bore;
- 5. 80 linear feet 1.5-inch Type K Copper via directional bore;
- 6. one Buffalo box ("B-Box");

- 7. One PVC storm sewer clean-out;
- 85 square feet of 6-inch PCC with aggregate base for a driveway installed on Lot 2;
- 9. 55 square feet of 5-inch PCC with aggregate base;
- 10. One pavement patch.

G. The Owner submitted a request asking the City Council to delay the completion of the Delayed Obligations until a permit application for the development of Lot 2 is submitted to the City.

H. The Owner and the City have determined that it is in their respective best interests to enter into this Agreement setting forth their respective obligations, responsibilities, and rights regarding the completion of the Delayed Obligations for Lot 2.

SECTION 2: PERFORMANCE OF DELAYED OBLIGATIONS. The City will not issue a permit for any improvement to Lot t2 unless the Owner has performed the Delayed Obligations in accordance with this Agreement, as follows:

A. The Owner must submit the Performance Security and Maintenance Warranty, in amounts complying with Sections 13-1-3 and 13-2-8 of the City Code, based on the Engineer's Estimate of Cost, or such other engineer's estimate of cost approved by the City, prior to or contemporaneously with the submission of the permit application for the development of Lot 2.

B. The Owner must either (i) complete the Required Public Improvements prior to submitting a permit application for any development of Lot 2; or (ii) include the Required Public Improvements, in compliance with Section 13-3-2 of the City Code, in the scope of work to be completed as part of the development of Lot 2 and complete the construction of the Required Public Improvements prior to or contemporaneously with the development of Lot 2, as authorized by the permit issued by the City.

SECTION 3: **COVENANTS RUNNING WITH THE LAND**. The restrictions imposed by this Agreement and the agreements and covenants contained in this Agreement shall be rights, restrictions, agreements and covenants running with the land, and shall be recorded against the Subdivision Property, and, after the Final Plat of Subdivision is recorded and new PINS have been assigned, Lot 2, and shall be binding upon and inure to the benefit of the Owner and the City and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of Lot 2, or any part of Lot 2, and all persons claiming under them. If any of the rights, restrictions, agreements, or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such rights, restrictions, agreements or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of Jay Robert "J.B." Pritzker, current Governor of the State of Illinois.

SECTION 4: **AMENDMENT**. This Agreement may be modified, amended, or annulled only by the written agreement of the Owner and the City, and a copy or memorandum of such written agreement will be recorded in the Cook County Clerk's Recording Division.

SECTION 5: **ENFORCEMENT**. The Owner recognizes and agrees that the City has a valid interest in ensuring that this Agreement is properly adhered to and therefore does hereby grant the City the right to enforce this Agreement by any proceeding at law or in equity against any person or persons attempting to violate any restriction contained herein, either to restrain violations, to compel affirmative action, or to recover damages.

SECTION 6: **EXERCISE OF CITY RIGHTS; WAIVER.** The City is not required to exercise the rights granted herein except as it shall determine to be in its best interest. Failure

by the City to exercise any right herein granted shall not be construed as a waiver of that right or any other right.

SECTION 7: **TERMINATION; RELEASE.** This Agreement and the obligations imposed in this Agreement may be released upon recordation of a document acknowledging such release, which document must be executed by the City and the Owner.

SECTION 8: GENERAL PROVISIONS.

A. <u>Recordation</u>. This Agreement shall be recorded with the Cook County Clerk's Recording Division and all contracts and deeds of conveyance relating to the Subdivision Property or Lot 2, or any part thereof, shall be subject to the provisions of this Agreement.

B. <u>Headings</u>. The headings of the Sections in this Agreement are intended for reference only and are not intended to alter, amend or affect any of the terms or provisions of this Agreement.

C. <u>Severability</u>. Invalidation of any one of these agreements, covenants and restrictions by a judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

D. <u>Notice</u>. Any notice to the Owner under this Agreement shall be given to the last name and address shown on the most recent real estate tax bill for Lot 2 issued by the County Treasurer. Any notice to the City under this Agreement shall be given to:

City of Des Plaines Attention: City Manager 1420 Miner Street Des Plaines, IL 60018

With a copy to:

Elrod Friedman LLP 325 N. LaSalle Street, Suite 450 Chicago, Illinois 60654 Attention: Peter M. Friedman

E. <u>Exhibits</u>. Exhibits A through C attached to this Agreement are incorporated herein

and made a part hereof by this reference.

F. Governing Law. This Covenant shall be governed by the internal laws, but not

the conflicts of laws rules, of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the date first above written.

ATTEST:

CITY OF DES PLAINES

City Clerk

By: _____ City Manager

ATTEST:

JEAN BONK

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)) SS COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that ______, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2024.

SS

Notary Public

STATE OF ILLINOIS

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that ______, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2024.

Notary Public

EXHIBIT A

Legal Description of the Subdivision Property

Prior to Subdivision:

The Westerly 220 feet of the easterly 660 feet of the southerly 100 feet of the northerly 800 feet of the Southwest Quarter of the Southwest Quarter of Section 29, Township 41 North, Range 12, East of the Third Principal Meridian, In Cook County, Illinois.

PIN: 09-29-302-042-0000

After Subdivision:

Lots 1 and 2 in Bonk Subdivision being a subdivision in the Southwest Quarter of the Southwest Quarter of Section 29, Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, as depicted on the Final Plat of Bonk Subdivision recorded with the Cook County Clerk's Recording Division as document number ______ on

PINs: _

[To be filled in once subdivision plat is recorded and new PIN is assigned.]

Legal Description of Lot 2 after Recordation of Final Plat of Subdivision

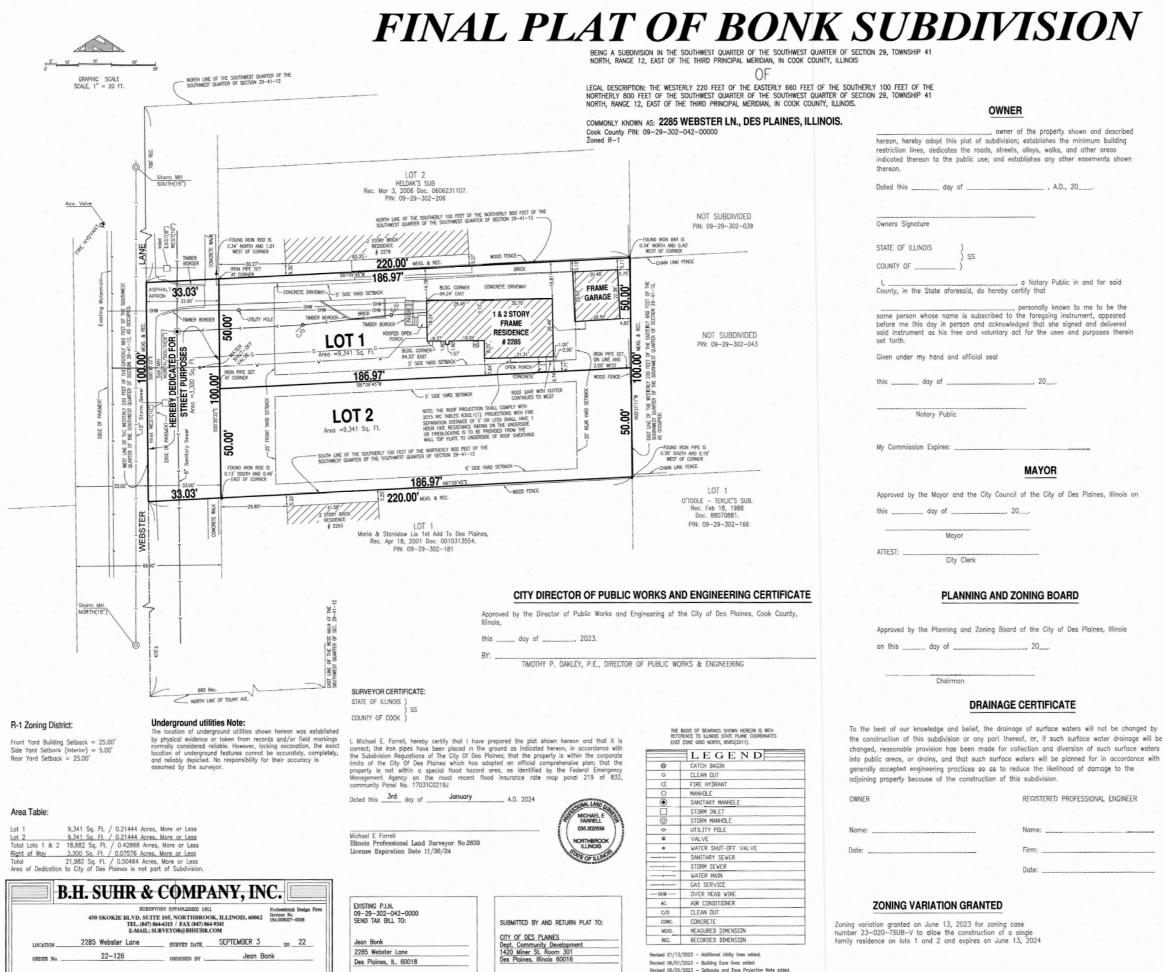
Lot 2 in Bonk Subdivision being a subdivision in the Southwest Quarter of the Southwest Quarter of Section 29, Township 41 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, as depicted on the Final Plat of Bonk Subdivision recorded with the Cook County Clerk's Recording Division as document number ______ on

PIN:_____

[To be filled in once new PIN is assigned.]

<u>EXHIBIT B</u>

FINAL PLAT OF SUBDIVISION



EXHIBIAT A

DRAFTER o 2021 B. E. Suite & Company, Inc. All rights reserved

CONSENT OF MORTGAGEE

, which is the holder of
a mortgage dated as of, 20, and recorded in the Office
of the Cook County Recorder, Illinois on, 20, 20 as
on this Plat of Subdivision, hereby consents to the recording of this Plat of
Subdivision and agrees that its lien shall be subject to the provisions of
this Plat of Subdivision.
IN WITNESS WHEREOF, the undersigned has caused this Consent to be executed
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By:
Uj
Its:
ATTEST:
ATTEST:
Ву:
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lts:
STATE OF ILLINOIS)
) SS.
COUNTY OF)
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the identical persons who signed the foregoing instrument as such officers of
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ilinois I Pröfessional Land Surveyor No. 035-License Expiration Date 11/30/2023

Page 15 of 17

NORTHBROOK

(SEAL)

EXHIBIT C

ENGINEER'S ESTIMATE OF PROBABLE COSTS

The Daniel Creaney Company 450 Skokie Blvd., Suite 105, Northbrook, IL 60062 (847) 480-5757 * FAX (847) 480-7209

Date: 5/10/2024 Project: 2285 Webster Lane Job #: 8167 By: DAC

OPINION OF PROBABLE CONSTRUCTION COST

LOT 1 EXISTING HOUSE			
Quantity	Unit	Item	Unit Cost Total
1	EA	6" PCC w/agg (driveway)	\$ 2,500.00 \$ 2,500.00
250	SF	5" PCC w/agg sidewalk	\$ 20.00 \$ 5,000.00
500	SF	Swale	\$ 4.00 \$ 2,000.00
500	SF	6" Topsoil and seed	\$ 2.00 \$ 1,000.00
		TOTAL	\$ 10,500.00
HOUSE IMPROVEMENTS			
Quantity	Unit	Item	Unit Cost Total
197	LF	8" PVC SDR-26 storm sewer	\$45.00 \$ 8,865.00
3	EA	24" Diameter catch basin	\$1,000.00 \$ 3,000.00
9	LF	Granular trench backfill	\$25.00 \$ 225.00
50	LF	6" PVC, SDR-21, dir. Bore	\$150.00 \$ 7,500.00
80	LF	1 1/2" Type K copper, dir. Bore	\$100.00 \$ 8,000.00
1	EA	B-Box	\$500.00 \$ 500.00
1	EA	Clean Out	\$250.00 \$ 250.00
85	SY	6" PCC w/agg (driveway)	\$4,800.00 \$ 4,800.00
55	SF	5" PCC w/agg base	\$10.00 \$ 550.00
1	EA	Pavement patch	\$3,000.00 \$ 3,000.00
		TOTAL	\$ 36,690.00



1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date:	June 10, 2024
To:	Dorothy Wisniewski, City Manager
From:	Jeff Rogers, Director of Community and Economic Development
Cc:	Stewart Weiss, Partner, Elrod Friedman, General Counsel
Subject:	Additional Extension and Amendments to Temporary Abeyance of Enforcement for Commercial Parking at 3001 Mannheim Road (Holiday Inn Express and Suites, Orchards at O'Hare)

Issue: The Holiday Inn Express and Suites hotel at 3001 Mannheim Road in the Orchards at O'Hare development has been operating a commercial parking lot use, as defined in Section 12-13-3 of the Zoning Ordinance, since approximately mid-July 2021. This activity is not allowed at the C-3-zoned property without a conditional use permit and is also not permitted by the ordinance approving the Orchards at O'Hare planned unit development (PUD). However, from 2021 through 2024, the City Council passed five separate resolutions (R-189-21, November 15, 2021; R-110-22, June 20, 2022; R-208-22, December 5, 2022, R-110-23, June 5, 2023; and R-74-24, March 18, 2024) to enter into and maintain a compliance and temporary abeyance of enforcement agreement with the property owner to allow the activity to occur. The current agreement will expired on June 15, 2024.

The property owner/hotel management (Prominence) has submitted the attached request to the Council to extend the temporary allowance via an amended agreement, with termination upon July 17, 2024.

Analysis: The commercial parking activity is driven by visitors (typically O'Hare Airport travelers) reserving a parking space through third-party apps and websites such as Way.com. The commercial parking is providing an ancillary revenue stream to the hotel. The hotel representative also reports that construction and development activity are imminent, as construction activity relating to the Cilantro Taco/Ostra's restaurants within the hotel is nearing completion. Proposed Tesla charging stations on Lot 5 have been indefinitely postponed by the applicant, and permit plans for the Popeye's restaurant with drive-through are presently in the plan review process between the developer and the City.

The property lies within the O'Hare Corridor Privilege Area and is subject to a \$1 per car daily parking tax, which has been remitted monthly to the City since December 2021.

The amended and extended agreement stipulates the following requirements for property ownership:

• Remit as required by the Finance Department the \$1-per-car, per-day O'Hare Privilege Corridor Parking Tax;



- Maintain a Parking Lot Permit from the City as required by Section 7-7-2 of the City Code in good standing at all times when conducting the Commercial Parking;
- Confine the commercial parking activity to the hotel parcel, Lot 3, and the freestanding restaurant parcel, Lot 5, in the development;
- Prevent commercial parking from interfering with the parking needs of the hotel or any other development and business activity within the Planned Development Property, avoiding a parking shortage for any existing use within the development;
- Conduct commercial parking only on a hard, all-weather, dustless surface in permanently striped parking spaces, with drive aisle widths and parking space dimensions that comply with Section 12-9-6 of the Zoning Ordinance; and
- Maintain all portions of the Orchards at O'Hare development free of nuisances and undue service demand from the City of Des Plaines, including but not limited to property maintenance code enforcement and public safety (Police and Fire)
 - Related: To activate the agreement, all property maintenance issues must be inspected and resolved, and any owed fees or fines must be paid.

City Council Action: If the City Council agrees with the developer's rationale and request, it may approve Resolution R-122-24 to allow the City to enter into this agreement, formalizing the additional extension and amended agreement.

Attachments

Attachment 1: Request for Extension from Prominence Hospitality / Holiday Inn Management Attachment 2: Orchards at O'Hare Lot Map

Resolution R-122-24

Exhibit A: Fourth Amended and Extended Compliance and Abeyance of Enforcement Agreement

From: Dhaval Brahmbhatt
Sent: Wednesday, June 5, 2024 7:07 PM
To: Rehan Zaid; Jeffrey Rogers;
Cc: Vickie Baumann; Lauren Griffin; Justina Pikor; Dhaval Brahmbhatt;
Subject: RE: City of Des Plaines Notice re Cease & Desist Order for Commercial Parking Use at 3001-3025
Mannheim Road effective 06/16//2024

Jeff,

Thank you for the heads up on this. I wanted to follow up on behalf of the hotel, and we appreciate your past support. My understanding was that we would be able to continue the commercial parking until the construction started on the restaurant site, but that may have been a misunderstanding of mine.

We are already in the process of terminating this service as we are scheduled to start construction on July 17th. As per our agreement with the vendor, we are also required to give a minimum of 30 days' termination notice, which we are executing now to align with the July 17th start date for construction. This will also impact our associates, in particular the drivers, as I will be issuing layoff notices as there won't be a need for that service once the commercial parking contract has ended. I was hoping to give them the same 30 days' notice to help them find other work.

Again, we appreciate your past support. We are almost at the end of the commercial parking. Would the steps and dates outlined above be agreeable?

Dhaval Brahmbhatt

Principal, Hotel Operations & Asset Management Prominence Hospitality Group

o <u>224.218.0334</u> c <u>773.617.0373</u> e <u>dbrahmbhatt@prohosp.com</u> 1375 Remington Rd Ste E, Schaumburg, II 60173

Visit online at https://link.edgepilot.com/s/edfabe12/uiVr91XtAkWtRs4x8o7EsA?u=http://www.prohosp.com/





CITY OF DES PLAINES

RESOLUTION R - 122 - 24

A RESOLUTION APPROVING A FOURTH AMENDED TEMPORARY ABEYANCE OF ENFORCEMENT AGREEMENT BETWEEN THE CITY OF DES PLAINES, PROMINENCE HOSPITALITY GROUP, AND O'HARE REAL ESTATE LLC.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the City previously entered into that certain Amended and Restated Redevelopment and Economic Incentive Agreement with O'Hare Real Estate, LLC ("*Redevelopment Agreement*") dated as of July 6, 2016 which governs the ongoing redevelopment of certain parcels located at the northwest corner of Mannheim and Higgins Road comprising the Orchards at O'Hare Subdivision ("*Planned Development Property*"); and

WHEREAS, the Redevelopment Agreement required O'Hare Real Estate, LLC ("*ORE*") to redevelop the Planned Development Property with a hotel, a gas station, a car wash, and a restaurant (collectively, the "*Project*") in exchange for certain financial incentives, including (i) reimbursement of certain redevelopment project costs pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/1-74.4-1 *et seq.*); (ii) a partial rebate of sales taxes generated by commercial uses on the Planned Development Property; and (iii) a partial rebate of the City Hotel-Motel Operator's Occupation Tax and the City's O'Hare Corridor Privilege Tax collected from hotel to be constructed on the Planned Development Property (collectively, the "*Financial Incentives*"); and

WHEREAS, after the execution of the Redevelopment Agreement, ORE conveyed a portion of the Planned Development Property designated as the "*Hotel Property*" to Prominence Hospitality Group, LLC ("*Prominence*") which constructed a Holiday Inn Express ("*Hotel*") on the Hotel Parcel; and

WHEREAS, Prominence and ORE have, since July 2021, conducted a commercial parking operation for cars not associated with guests of the Hotel on both the Hotel Parcel and another portion of the Planned Development Property designated as the "*Restaurant Parcel*" ("*Non-Accessory Commercial Parking*"); and

WHEREAS, the City has determined, and Prominence and ORE acknowledge and agree, that (i) the operation of the Non-Accessory Commercial Parking on the Planned Development Property constitutes a violation of the Redevelopment Agreement, the entitlements granted for the Project, and the Zoning Ordinance; and (ii) the City has the right under law to seek fines and obtain injunctive relief against Prominence to cease all operation of the Non-Accessory Commercial Parking on the Planned Development Property; and

WHEREAS, the City Council previously approved Resolution R-189-21 and Resolution R-110-22 to hold its enforcement rights in abeyance and to allow the continued operation of the Non-Accessory Commercial Parking on the Owners' property on a temporary basis conditioned on the Owners' compliance with certain requirements and obligations set forth in the Compliance and Temporary Abeyance of Enforcement Agreement ("*Original Compliance Agreement*"); and

WHEREAS, after the Original Compliance Agreement expired by its own terms November 15, 2022, the City Council subsequently approved Resolution R-208-22 to continue to hold its enforcement rights in abeyance and to allow the continued operation of the Non-Accessory Commercial Parking on the Owners' property on a temporary basis conditioned on the Owners' compliance with certain requirements and obligations set forth in the Compliance and Temporary Abeyance of Enforcement Agreement ("Amended Compliance Agreement"); and

WHEREAS, after the Amended Compliance Agreement expired by its own terms on May 15, 2023, the City Council subsequently approved Resolution R-110-23 and to continue to hold its enforcement rights in abeyance and to allow the continued operation of the Non-Accessory Commercial Parking on the Owners' property on a temporary basis conditioned on the Owners' compliance with certain requirements and obligations set forth in the Compliance and Temporary Abeyance of Enforcement Agreement ("*Second Amended Compliance Agreement*"); and

WHEREAS, after the Amended Compliance Agreement expired by its own terms on December 31, 2023, the City Council subsequently approved Resolution R-74-24 and to continue to hold its enforcement rights in abeyance and to allow the continued operation of the Non-Accessory Commercial Parking on the Owners' property on a temporary basis conditioned on the Owners' compliance with certain requirements and obligations set forth in the Compliance and Temporary Abeyance of Enforcement Agreement ("*Third Amended Compliance Agreement*"); and

WHEREAS, the Third Amended Compliance Agreement expired by its own terms June 15, 2024;

WHEREAS, based on a request of Prominence Hospitality Group, LLC, the City Council has determined that it is in the best interest of the City to enter into an Amended and Extended Compliance and Temporary Abeyance of Enforcement Agreement, which extends the abeyance period until July 17, 2024, subject to early termination as set forth in Section 4 of the Fourth Amended Compliance Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: <u>APPROVAL OF AMENDED AND EXTENDED COMPLIANCE</u> <u>AGREEMENT</u>. The City Council hereby approves the Amended and Extended Compliance Agreement in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AMENDED AND EXTENDED COMPLIANCE AGREEMENT. The City Council hereby authorizes and directs the Mayor and the City Clerk to execute and seal, on behalf of the City, the Amended and Extended Compliance Agreement.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this _____ day of _____, 2024.

APPROVED this _____ day of _____, 2024.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

EXHIBIT A

AGREEMENT

FOURTH AMENDED AND EXTENDED COMPLIANCE AND TEMPORARY ABEYANCE OF ENFORCEMENT AGREEMENT BETWEEN THE CITY OF DES PLAINES, PROMINENCE O'HARE LLC, ORCHARDS LOT 5, LLC, AND O'HARE REAL ESTATE LLC (3001 MANNHEIM ROAD)

THIS AGREEMENT is made as of June ____, 2024 ("*Effective Date*") by and between the CITY OF DES PLAINES, an Illinois home rule municipal corporation ("*City*"), PROMINENCE O'HARE, LLC an Illinois limited liability company ("*Prominence*"), ORCHARDS LOT 5, LLC an Illinois limited liability company ("*Restaurant Parcel Owner*") and O'HARE REAL ESTATE LLC, an Illinois limited liability company ("*ORE*"). In consideration of the mutual promises of the parties hereto made each to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, Prominence, and ORE hereby agree as follows:

Section 1. Background.

A. Prominence is the owner of that certain property designated at Lot 3 in the Orchards at O'Hare Subdivision, and commonly known as 3001 Mannheim Road, Des Plaines, Illinois ("*Hotel Parcel*").

B. ORE is the original developer of a planned unit development that includes the Hotel Parcel, an adjacent parcel located directly to the west of the Hotel Parcel designated as Lot 5 in the Orchards at O'Hare Subdivision ("*Restaurant Parcel*"), and other surrounding parcels ("*Planned Development*") which was approved by City of Des Plaines Ordinance Z-18-16 ("*PUD Ordinance*") and was required to be constructed in accordance with that certain Amended and Restated Redevelopment and Economic Incentive Agreement dated as of July 6, 2016 and recorded in the Office of the Cook County Recorder as Document No. 1704519090 on February 14, 2017 ("*Redevelopment Agreement*").

C. After the adoption of the PUD Ordinance and the execution of the Redevelopment Agreement, ORE conveyed the Hotel Parcel to Prominence which constructed a Holiday Inn Express ("*Hotel*") on the Hotel Parcel.

D. After the adoption of the PUD Ordinance and the execution of the Redevelopment Agreement, ORE conveyed the Restaurant Parcel to the Restaurant Parcel Owner, which is an affiliate of ORE.

E. The Restaurant Parcel remains undeveloped.

F. The Hotel Parcel, the Restaurant Parcel, and all other portions of the Orchards at O'Hare Subdivision owned by ORE (collectively, the "*Planned Development Property*") are governed by the terms and restrictions set forth in the PUD Ordinance, the Redevelopment Agreement, and requirements of the C-3 General Commercial Zoning District as set forth in the Des Plaines Zoning Ordinance of 1998, as amended ("*Zoning Ordinance*").

E. Prominence and ORE have, since July 2021, conducted a commercial parking operation for cars not associated with guests of the Hotel on both the Hotel Parcel and the Restaurant Parcel ("*Non-Accessory Commercial Parking*"). This operation is considered a "Commercial Parking Lot" under the Zoning Ordinance, and was not contemplated as a permitted

use on the Planned Development Property by the PUD Ordinance or the Redevelopment Agreement.

F. Commercial Parking Lots require a conditional use permit to operate in the C-3 District.

G. The City has determined, and Prominence, ORE, and the Restaurant Parcel Owner acknowledge and agree, that (i) the operation of the Non-Accessory Commercial Parking on the Planned Development Property constitutes a violation of the Redevelopment Agreement, the PUD Ordinance, and the Zoning Ordinance; and (ii) the City has the right under law to seek fines and obtain injunctive relief against Prominence to cease all operation of the Non-Accessory Commercial Parking on the Planned Development Property.

H. The City Council, pursuant to Resolution R-189-21, approved the City's entrance into the original Compliance and Temporary Abeyance of Enforcement Agreement, which term to submit an application for modified zoning entitlements to allow the use permanently was waived by Resolution R-110-22. This original agreement was extended by Resolution R-208-22, which has expired under its own terms. This amended original agreement was extended by Resolution R-110-23, which has expired under its own terms. This amended original agreement was extended by Resolution R-110-24, which has expired under its own terms. This amended original agreement was extended by Resolution R-110-24, which has expired under its own terms.

I. Prominence, ORE, and the Restaurant Parcel Owner (collectively, the "**Owners**") have informed the City that, in order to avoid potential litigation and settle all disputes with respect to the Non-Accessory Commercial Parking between the Parties, they will (i) agree to all terms and limitations of this Amended and Extended Agreement and (2) request that the City grant the Owners permission to continue the Non-Accessory Commercial Parking on a temporary basis until the termination of the Extended Abeyance Period, defined herein.

J. The City is willing to hold its enforcement rights in abeyance and to allow the continued operation of the Non-Accessory Commercial Parking on the Owners' property on a temporary basis conditioned on the Owners' compliance with the requirements and obligations set forth in this Agreement.

Section 2. Further Abeyance of Enforcement.

A. <u>Extended Abeyance Period Defined</u>. For purposes of this Agreement, the Extended Abeyance Period will be defined as that period commencing on June 16, 2024, and ending upon July 17, 2024, subject to early termination as set forth in Section 4 of this Agreement ("*Fourth Extended Abeyance Period*").

B. <u>City Agreement Regarding Enforcement</u>. Subject to the Owners' compliance with the terms of this Agreement, including specifically the operating conditions set forth in Section 2.C of this Agreement, the City will, during the Third Extended Abeyance Period allow the Owners to continue to operate the Non-Accessory Commercial Parking on the Hotel Parcel and the Restaurant Parcel.

C. <u>Operation of the Non-Accessory Commercial Parking</u>. At all times during the Extended Abeyance Period, the Owners agree to conduct the Non-Accessory Commercial Parking in accordance with the following conditions:

- 1. The Owners will maintain and renew as may be required a Parking Lot Permit from the City as required by Section 7-7-2 of the City's Code of Ordinances and maintain the permit in good standing at all times when conducting the Non-Accessory Commercial Parking.
- 2. All Non-Accessory Commercial Parking must continue to be confined to the Hotel Parcel and the Restaurant Parcel, and will be prohibited on any other portion of the Planned Development Property.
- 3. The Non-Accessory Commercial Parking may not interfere with the parking needs of the Hotel or any other development and business activity within the Planned Development Property, and may not create a parking shortage for any existing use within the development.
- 4. All Non-Accessory Commercial Parking may only be conducted on a hard, all-weather, dustless surface in permanently striped parking spaces, with drive aisle widths and parking space dimensions that comply with Section 12-9-6 of the Zoning Ordinance.
- 5. For the duration of this Agreement, all portions of the Planned Development Property will be maintained free of nuisances and not create undue service demand from the City of Des Plaines, including but not limited to property maintenance code enforcement and public safety (Police and Fire).
- 6. The City shall not execute this Agreement unless its staff have verified that there are no active property maintenance violations and, if applicable, that any fees or fines related to previous violations have been paid.

D. <u>Payment of O'Hare Corridor Privilege Area Parking Tax</u>. The Owners acknowledge that the Hotel Parcel and the Restaurant Parcel are located with the City's O'Hare Corridor Privilege Tax Area and that all commercial parking activity within that Area is subject to the O'Hare Corridor Privilege Tax Area Parking Tax ("*Parking Tax*") as set forth in Section 15-6-2 of the City's Code of Ordinances. The Owners will continue to file with Finance Department the necessary forms to remit, at the frequency required by the Department, including all parking activity on or after June 15, 2024, as well as any payment due from activity conducted before December 31, 2023, but not yet remitted or collected.

E. The Owner's ability to continue to conduct the Non-Accessory Commercial Parking on their respective parcels will be contingent upon the continued timely payments set forth in Section 2.D of this Agreement.

Section 3. Termination of Extended Abeyance Period.

If, on or before the events established in Section 2.A of this Agreement, the City Council has denied or the Owners have not fulfilled the requirements of this agreement, the Owners must immediately bring all portions of the Planned Development Property into strict compliance with the PUD Ordinance, the Redevelopment Agreement, and all relevant provisions of the Zoning Ordinance. Specifically, and without limitation, all Non-Accessory Commercial Parking will cease on the Planned Development Property.

<u>Section 4.</u> <u>City's Reserved Rights</u>. Neither the City's execution of this Agreement nor its consent to abate its enforcement rights with regard to violations of the PUD Ordinance and the Redevelopment Agreement constitute a waiver of any other legal rights or authority the City may possess. The City hereby reserves and affirms its continuing right to enforce all criminal, health, safety, building, and property maintenance laws, ordinances, and regulations against the Owners, the Planned Development Property, and to pursue all remedies afforded to it under law.

Section 5. General Provisions.

A. <u>Indemnification</u>. The Owners hereby agrees to release, defend, indemnify, and hold harmless the City, its officers, agents, servants, officials, attorneys, employees, and representatives from and against any and all injuries, damages, claims, liabilities, demands, causes of action, losses, suits, expenses, and judgments of any and all nature and kind whatsoever, including without limitation costs, expenses, and attorneys' fees, to the extent arising out of, occasioned by, connected with, or in any way attributable to the approval of this Agreement by the City or the performance any actions on the part of the City required by this Agreement.

B. <u>Time of the Essence</u>. Time is of the essence in the performance of this Agreement.

C. <u>Rights Cumulative</u>. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement will be cumulative and will not be exclusive of any other rights, remedies, and benefits allowed by law.

D. <u>Non-Waiver</u>. The City will not be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of the City to exercise at any time any right granted to it may not be deemed or construed to be a waiver of that right, nor will the failure void or affect the City's right to enforce that right or any other right.

E. <u>Governing Law; Venue</u>. This Agreement will be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. <u>Severability</u>. It is hereby expressed to be the intent of the Parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

G. <u>Authority to Execute</u>. The City hereby warrants and represents to the Owners that the Person executing this Agreement on its behalf has been properly authorized to do so by the Ordinances of the City of Des Plaines. Prominence and ORE respectively warrant and represent to the City that the Persons executing this Agreement on their behalf have been properly authorized to do so by its managers and governing documents.

H. <u>No Third-Party Beneficiaries</u>. No claim as a third-party beneficiary under this Agreement by any Person may be made, or be valid, against the City or the Owners.

[THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have duly executed this Compliance and Temporary Enforcement Abeyance Agreement, as of the Effective Date of this Agreement.

PROMINENCE O'HARE, LLC, an Illinois limited liability company

THE CITY OF DES PLAINES, an Illinois home rule municipality

By:

Dorothy Wisniewski, City Manager

Attest:

Jessica M. Mastalski, City Clerk

Print Name

Signature

Its:

By:

Title

O'HARE REAL ESTATE, LLC, an Illinois limited liability company

ORCHARDS LOT 5, LLC, an Illinois limited liability company

By:___

Signature

Signature

Print Name

Print Name

lts:

Title

Its:_

By:___

Title

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street Des Plaines, IL 60016 P: 847.391.5380 desplaines.org

MEMORANDUM

Date: June 10, 2024

To: Dorothy Wisniewski, City Manager

From: Jeff Rogers, Director of Community and Economic Development Source David Anderson, Chief of Police

Subject: Overview of Local Municipal Requirements regarding Bee Hives and Apiaries

Issue: In advance of the June 17, 2024 meeting of the City Council, several alderman requested a summary for consideration and discussion of the City's prohibition of keeping or harboring bees, bee hives, and apiaries except where used only for educational purposes versus the requirements enforced in other local municipalities be placed on the June 17th City Council Agenda for discussion.

Analysis: Staff has prepared a summary of both the City's requirements as well as current requirements in our adjacent communities relating to beekeeping, bee hives, and apiaries.

Background: The City last amended its regulations regarding beekeeping in 2018. Until that time, the keeping of bees was allowed only in areas more than one-quarter (1/4) mile from any residence, school, church, or other place of public gathering. The Code amendment approved in 2018 modified the Code to prohibit the purposeful keeping of bees by residents in any artificial apiary except where used for educational purposes. Provisions were introduced at that time to establish new buffer distances, quantities, and licensing requirements.

The current requirements of the City Code can be found within Title 5: Public Health and Safety, Chapter 3: Nuisances, Sec. 5-3-1: Nuisances Declared, Subsection H which states:

- H. Apiaries: It shall be unlawful to keep, harbor or maintain any bees or to operate any apiaries for housing the same, except that bees may be kept and used only for educational purposes under the following conditions:
 - 1. Beehives are located no closer than two hundred fifty feet (250') from a residence;
 - 2. No more than four (4) beehives are kept and maintained; and
 - 3. Beekeepers must register their beehive(s) with the Illinois Department of Agriculture and provide proof of registration to the City.

Annually, the City's Animal Control Officer receives approximately 2-3 complaints regarding bee hives. Each complaint is inspected, reviewed for compliance with the City Code, and enforced in accordance with the circumstances associated with each instance.



For consideration, staff prepared the following summary of the requirements for bees, hives, and apiaries among neighboring communities:

Municipality	Is beekeeping	If "yes," what additional restrictions apply?
	permissible?	
Des Plaines	Only in	a. Only where kept for educational purposes;
	certain	b. Up to four (4) apiaries;
	circumstances	c. Minimum setback of 250 feet to any residence; and
	37	d. Must register with the Illinois Department of Agriculture.
Arlington Heights	Yes	Must register with the Illinois Department of Agriculture
Elk Grove Village	Only in	a. Only where kept for educational purposes, environmental
	certain	sustainability, and/or where no income is generated;
	circumstances	b. Up to four (4) apiaries;
		c. Minimum setback of 250 feet to any residence;
		d. Only permissible in the rear yard in single-family
		residential zoning districts;
		e. Must register with the Illinois Department of Agriculture;
		and f A diag station "State Desistant Desking(s) on Descents"
		f. A sign stating "State Registered Beehive(s) on Property"
Clanuian	No	must be posted facing each adjacent property.
Glenview Manual Discussion	No	
Mount Prospect	No	N/A
Niles	Only in	a. Permissible only for property located in the P-I
	certain	Public/Institutional Lands Zoning District and identified
	circumstances	as a "Community Rain Garden;"
		b. Up to four permits permitted annually throughout the
		community;
		c. Up to five (5) apiaries;
		d. Apiary sites shall be at least 600 feet from any other apiary site; and
		e. Apiaries shall be located at least 6.0 feet from a common lot line and at least 15.0 feet from any right-of-way.
Park Ridge	No	N/A
Prospect Heights	No	N/A
Rosemont	No	N/A

Other Considerations: Staff prepared the following summary of generally relevant information relating to beekeeping and statistics relating to bees throughout the U.S.:

- a. Of all insect species, honey bees are commonly considered among the most beneficial.
- b. The honey bee makes its greatest contribution by pollinating plants. More than one half of all fruit and vegetable crops are pollinated by honey bees.
- c. Approximately 200 million pounds of honey is produced commercially each year.
- d. A typical beehive is approximately 22 inches square by 16 inches high.
- e. There are two (2) main types of beehive structures. These include:
 - 1. Langstroth hive: The most common hive, the Langstroth is a series of stackable boxes, each with square frames within which bees will build their combs.
 - 2. Top bar hive: This is a more primitive design featuring bars that lay horizontally across the top of a long wooden box allowing bees to build their combs downward from the bars.

- f. Experts suggest that the entrance to a beehive ideally should face toward the south or to the east, be unobstructed by fencing or other structures for a distance of at least 25 feet at the entrance, and spacing among apiaries should be at least 4-8 feet.
- g. Although apiaries may be spaces more closely together, generally approximately one-half acre of land should be provided for each bee hive.
- h. Landscape maintenance near beehives can agitate bees. Experts recommend mowing and edging in the late evening right before dark when the bees are much less likely to leave their shelter.
- i. Honey bees need a source of water and can be found in residential areas near natural water sources, bird baths, and swimming pools.
- j. Approximately one-percent (1%) of the population is allergic to bee and wasp venom.
- k. There are no specific statistics regarding death or injuries relating to honey bees in the U.S. Instead, the Centers for Disease Control (CDC) combines data related to deaths from all hornet, wasp, and bee stings. According to the CDC's National Vital Statistics System, in the 11 years from 2011–2021, a total of 788 deaths occurred (an average of 72 deaths per year, or approximately 1 per every 4.77 million people). The annual total deaths ranged from 59 (2012) to 89 (2017).

City Council Action: This information is being presented for the City Council's consideration and discussion.

Attachments:

None