

AGENDA  
COMMITTEE OF THE WHOLE  
December 12, 2017  
2200 Harnish Drive  
Village Board Room  
- AGENDA -  
7:30 P.M.

Trustee Jasper – Chairperson  
Trustee Brehmer  
Trustee Glogowski  
Trustee Steigert  
Trustee Sosine  
Trustee Spella  
President Schmitt

1. **Roll Call – Establish Quorum**
2. **Public Comment – Audience Participation** (*Persons wishing to address the Committee on an item on this agenda must register with the Chair prior to roll call.*)
3. **Community Development**
  - A. Case Number 2015-12; 202 N. Main - Request for Residential Special Use Extension
4. **General Administration**
  - A. Consider a Resolution Adopting an Anti-Harassment Policy
5. **Public Works & Safety**
  - A. Consider an Agreement with Martam Construction for the Cumberland Parkway Storm Sewer Revision Project
  - B. Consider an Agreement with Sensus FlexNet AMI System for Management, Meters, and Installation of Residential and Commercial Water Meters
  - C. Consider an Agreement with Midwest Salt for Water Softener Salt
  - D. Consider an Agreement with HR Green for Phase 1 Design Engineering Services for the Souwanas Creek Reach 2 Improvement
  - E. Consider an Agreement with Christopher Burke Engineering for the Downtown Streetscape and Utility Work; Design-Build Services
6. **Executive Session**
7. **Other Business**
8. **Adjournment**



**VILLAGE OF ALGONQUIN**  
**COMMUNITY DEVELOPMENT DEPARTMENT**

**– M E M O R A N D U M –**

DATE: December 12, 2017

TO: Committee of the Whole

FROM: Benjamin A. Mason, AICP, Senior Planner

SUBJECT: **Case No. 2015-12. 202 N Main–Request for Special Use Permit Extension**

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Introduction

Mr. Robert Pogorzelski has submitted a request for an extension to a Special Use Permit that was originally issued in 2013 for residential dwelling units at 202 N. Main Street.

Background

The property is zoned B-1 Business and is located in the village's Old Town District north of the intersection with Front Street.



**202 N. Main**

The petitioner was originally before the Village Board in Fall 2013, to request the use of both the first floor and second floor of the structure as residential. Residential use of commercially-zoned buildings Downtown is only allowed by right on the second floor and attached is a copy of Ordinance 2013-O-54 that granted the Special Use Permit to allow residential apartments on both the first and second floors.

The property owner subsequently petitioned and was granted by the Board a two-year extension of the Special Use Permit in Fall 2015. Due to limited interest in the building for commercial/office purposes given the challenging economic climate, the village agreed to allow for continued residential use of the first floor with the condition that the request come back before the Board prior to January 1, 2018 to re-evaluate the matter. Specifically, condition C in Ordinance 2015-O-46 stated:

*In the event no property maintenance citations are issued with a finding of liable prior to January 1, 2017, the Special Use shall then be automatically extended for one additional year to January 1, 2018. The property owner shall be required to*

*petition the Village Board to request an extension of the Special Use Permit beyond January 1, 2018.*

The ongoing slow economic recovery and numerous other available commercial storefront vacancies in the core downtown area – south of Algonquin Road – would appear to provide a compelling reason and sufficient cause to grant another extension.

Staff Recommendation

In light of the improved property maintenance conditions at the subject property, Staff recommends a five-year extension to the special use permit, with the following conditions:

1. The Special Use shall be extended for an additional five years, until January 1, 2023.
2. The Special Use shall terminate automatically when/if one (1) property maintenance violation results in a citation issued through the village's Administrative Adjudication Court prior to January 1, 2023.
3. The property owner shall be required to petition the Village Board to request an extension of the Special Use Permit beyond January 1, 2023.
4. If at any time the Special Use is terminated due to failure to comply with any of the conditions of approval, the first floor shall be required to be vacated for two (2) years from the date of termination, before a new residential Special Use request shall be considered by the Village Board.
5. That all those conditions contained in Ordinance No. 2013-O-54 approving the special use permit for 202 N. Main shall remain in full force and effect.

Attachments: Petitioner Letter (November 27, 2017)  
Ordinance No. 2015-O-46  
Ordinance No. 2013-O-54

Robert Pogorzelski & Nick Vesselinov  
202 N. Main Street  
Algonquin, IL 60102

November 27, 2017

Mr. Ben Mason  
Senior Planner  
Village of Algonquin  
Algonquin Planning and Zoning Commission  
2200 Harnish Drive  
Algonquin, IL 60102

Re: 202 N. Main Street  
Algonquin, IL 60102

Dear Mr. Mason:

Please use this letter as our formal request for an extension of the Special Use permit for the first floor spaces of the above referenced building.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert Pogorzelski", followed by a long horizontal line extending to the right.

Robert Pogorzelski

RP/ka

## **ORDINANCE NO. 2015 - O - 46**

### **An Ordinance Granting An Extension For A Special Use Permit for Residential Dwelling Units Located At 202 North Main Street**

WHEREAS, the Village of Algonquin, McHenry and Kane Counties, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the VILLAGE OF ALGONQUIN, McHenry and Kane Counties, Illinois, as follows:

SECTION 1: That the special use permit for residential dwelling units at 202 North Main Street, which was approved pursuant to Ordinance No. 2013-O-54, is hereby extended subject to the following documents and conditions:

- A. The Special Use permit shall be extended for one additional year, until January 1, 2017;
- B. The Special Use permit shall terminate automatically, with no further action by the Village Board, in the event a property maintenance citation is issued and the owners are found liable for same through the Village's Administrative Adjudication Court, or civil court as the case may be, prior to January 1, 2017;
- C. In the event no property maintenance citations are issued with a finding of liable prior to January 1, 2017, the Special Use shall then be automatically extended for one additional year to January 1, 2018. The property owner shall be required to petition the Village Board to request an extension of the Special Use Permit beyond January 1, 2018;
- D. If at any time the Special Use permit is terminated due to failure to comply with any of the conditions of approval, the first floor residential use shall be vacated for two (2) years from the date of termination before a new residential Special Use request shall be considered by the Village Board;
- E. That all the conditions contained in Ordinance No. 2013-O-54 approving the special use permit for 202 N. Main shall remain in full force and effect.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

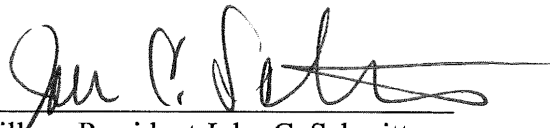
Aye: Dianis, Sosune, Stergert, Glogowski

Nay: 0

Absent:

Abstain: 0

APPROVED:

  
Village President John C. Schmitt



ATTEST:   
Village Clerk Gerald S. Kautz

Passed: December 15, 2015

Approved: December 15, 2015

Published: December 16, 2015

Prepared by: Village Staff  
Reviewed by:  
Kelly Cahill, Village Attorney  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, Illinois 60014

**ORDINANCE NO. 2013 - O - 54**

**An Ordinance Issuing a Special Use Permit for Residential Dwelling Units  
at 202 North Main Street**

WHEREAS, the Village of Algonquin, McHenry and Kane Counties, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, the Village of Algonquin has been requested by a petition signed by Nikolay Vesselinov and Robert Pogorzelski, the property owners, to issue a special use permit to allow for residential dwelling units on certain territory legally described as follows:

Lot 1 in Block 13 and the North Half of vacated Park Street Southwesterly of and adjacent to said Lot 1 bound on the Northwest by the Northwesterly line of said Lot 1 extended Southwesterly and on the Southeast by the Southeasterly line of said Lot 1 extended Southwesterly, (vacated by the Village of Algonquin per ordinance No. 96-0-71 and recorded on April 2, 1997, as Document No. 97R014542), in the Village of Algonquin, a Subdivision of part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, Township 43 North, Range 8 East of the Third Principal Meridian, according to the Plat thereof recorded December 15, 1846 in Book "G" of Deeds, page 294 in McHenry County, Illinois.

and commonly known as 202 N. Main Street, Algonquin, IL 60102 ("Subject Property"); and

WHEREAS, a public hearing was held before the Algonquin Planning and Zoning Commission, after due notice in the manner provided by law; and

WHEREAS, the Algonquin Planning and Zoning Commission, after deliberation, has made a report and recommended the issuance of said special use permit for the Subject Property; and

WHEREAS, the Village Board of Trustees has considered the findings of fact, based upon the evidence presented at the public hearing to the Algonquin Planning and Zoning Commission by the petitioners.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the VILLAGE OF ALGONQUIN, McHenry and Kane Counties, Illinois, as follows:

SECTION 1: The special use permit for residential dwelling units, which consists of the following conditions, is hereby approved:

- A. The Special Use Permit for residential use shall apply to both the two (2) units on the first floor and one (1) unit on the second floor of the building on the property;
- B. The Special Use Permit for residential use of the first floor shall terminate automatically on January 1, 2016. Should the property owner desire to request an extension of the Special Use Permit for residential use of the first floor beyond January 1, 2016, the owner shall be required to petition the Village Board, who, in its sole discretion and without the

matter being referred back to the Planning and Zoning Commission, shall determine whether the special use should expire or be extended to continue to allow residential use on the first floor of the building. Otherwise, the first floor shall be required to be tenanted by commercial uses, consistent with the parcel's B-1 zoning designation, after January 1, 2016;

- C. When residential use of either the first floor or second floor is discontinued for greater than six (6) consecutive months, the special use permit shall expire for that particular floor and that space shall be required to comply with the underlying zoning regulations of the commercial B-1 district and all building code requirements for a commercial use;
- D. The property owner is required to notify the Village in writing when the residential use on the first floor, second floor or both is discontinued within a reasonable time after said discontinuance;
- E. The building shall meet Village code requirements for residential dwelling units. Based on a walk-through inspection by the Building Commissioner, the petitioner shall be required to install the following items in the second floor bedroom to conform to the building code: smoke detectors and CO2 detectors. The petitioner shall contact the Building Department once these improvements have been made and by no later than December 1, 2013, to schedule a follow-up inspection. In the event the follow-up building inspection is not scheduled by the property owner in a timely manner, the village shall have the authority to terminate the special use permit for residential dwelling units on the property;
- F. The property shall be maintained according to the village's property maintenance standards. Recent inspections of the site revealed peeling paint, overgrown vegetation, and parking on the grass, all of which have been addressed by the owner over the past three months but will continue to be monitored by village staff. In the event the property is routinely in violation of the village's property maintenance code, the village shall have the authority to terminate the special use permit for residential dwelling units on the property.

SECTION 2: That all requirements set forth in the Algonquin Zoning Ordinance, as would be required by any owner of property zoned in the same manner as the Subject Property shall be complied with, except as otherwise provided in this Ordinance.

SECTION 3: The findings of fact on the petition to issue the special use permit for the Subject Property are hereby accepted.

SECTION 4: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

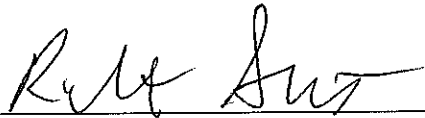
SECTION 5: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.



Aye: STEIGENT, SPELA, SOSINE, DIAMIS, GLOGOWSKI, SMITA  
Nay: NONE  
Absent: NONE  
Abstain: NONE

APPROVED:

  
Village President John C. Schmitt

(SEAL)  
ATTEST:   
Village Clerk Gerald S. Kautz

Passed: 11-19-13  
Approved: 11-19-13  
Published: 11-20-13

Prepared by: Village Staff  
Reviewed by:  
Kelly Cahill, Village Attorney  
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## MEMORANDUM

**To:** Committee of the Whole

**From:** Kelly A. Cahill, Village Attorney 

**Date:** December 7, 2017

**RE:** Public Act 100-0554

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The Governor signed Public Act 100-0554 into law on November 16, 2017 which went into effect immediately and requires all governmental entities to enact a sexual harassment policy with certain provisions on retaliation and filing of false claims. This policy must be enacted by January 15, 2018. While the Village already has a sexual harassment policy in place, the new law requires additional language. Thus, I have drafted the attached general harassment policy incorporating a prohibition on sexual harassment which includes all the new requirements under the Public Act. I also attached a resolution to adopt same. This new policy should be incorporated into the Village's personnel manual. Please let me know if you have any questions.

*Z:\A\AlgonquinVillageof\Memo.COW.harassment.doc*

**VILLAGE OF ALGONQUIN - PERSONNEL POLICY MANUAL**  
**APPENDIX F – ANTI-HARASSMENT POLICY**

**Section 14.1. Introduction.**

The Village desires to have a professional working environment for its employees so that they may carry out their duties in productive and positive surroundings. Although conduct may not rise to the level of unlawful harassment from a legal perspective, the Village wants to protect its employees from abuse and to prevent conduct from becoming so severe or pervasive as to alter the conditions of an employee's employment, create an abusive, intimidating or hostile working environment, or result in a tangible employment action. Accordingly, the Village has adopted a "zero tolerance" policy against harassment. Harassment is unwarranted and unwanted verbal or nonverbal conduct that threatens, intimidates, annoys or insults another person where such conduct has the purpose or effect of creating an offensive, intimidating, degrading and/or hostile working environment and/or interferes with and/or adversely affects a person's performance.

The Village prohibits any form of unlawful harassment against its employees and applicants for employment based on factors such as sex (including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions), race, color, creed, religion, ancestry, national origin, age, mental or physical disability, marital status, veteran status, sexual orientation including gender-related identity, whether or not traditionally associated with the person's designated sex at birth, or any other basis prohibited by applicable federal, state, or local fair employment laws or regulations.

**Section 14.2. Sexual Harassment.**

With respect to sexual harassment, the Village prohibits any unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct may have the purpose or effect of unreasonably interfering with an individual's work performance; or
4. such conduct may create an intimidating, hostile, or offensive working environment.

Examples of the types of conduct that would violate the Village's policy including the following:

- **Verbal:** sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- **Non-verbal:** suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- **Visual:** posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.

- **Physical:** touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- **Textual/Electronic:** “sexting” (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

Both opposite sex and same sex harassment are prohibited under this policy.

#### **Section 14.3. Other Forms of Harassment.**

With respect to other forms of harassment, the Village prohibits slurs or other verbal or physical conduct relating to matters such as race, color, creed, religion, ancestry, national origin, age, mental or physical disability, marital status, veteran status, sexual orientation including gender-related identity, whether or not traditionally associated with the person’s designated sex at birth, or any other basis prohibited by applicable federal, state, or local fair employment laws or regulations which:

1. may have the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
2. may have the purpose or effect of unreasonably interfering with an individual’s work performance; or
3. otherwise may adversely affect an individual’s employment opportunities.

#### **Section 14.4. Coverage of the Policy.**

1. The Village’s “zero-tolerance” policy with respect to harassment applies to conduct in or connected to the workplace, whether it is physical or verbal, and whether it is committed by Village officials, department heads, fellow employees or non-employees (such as customers, vendors, suppliers, or business invitees). The conduct prohibited by this policy is not only unacceptable in the workplace itself but also at any other work-related setting such as holiday parties, gatherings or other work-related social events, on business trips, and at conferences, seminars, educational gatherings, and other meetings. Each Village official and department head is responsible for creating an atmosphere free of harassment, whether it is sexual or another form of harassment. In addition, all employees are responsible for respecting the rights of their fellow employees and for cooperating in any investigation of alleged harassment.

2. Responsibilities:

Each employee is responsible for assisting in prevention of harassment through the following acts:

- Refraining from participation in, or encouragement of, actions that could be perceived as harassment;
- Reporting acts of harassment; and

- Encouraging any employee, who confides that he/she is being harassed, to report these acts of harassment.

Each supervisor shall be responsible for preventing acts of harassment. These responsibilities include:

- Monitoring the workplace environment on a daily basis for signs that harassment may be occurring.
- Counseling all employees on the types of behavior prohibited and the Village's procedures for reporting and resolving complaints of harassment.
- Stopping any observed acts that may be considered harassment and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision.
- Taking immediate action to limit the work contact between employees where there has been a complaint of harassment, pending investigation.

Each supervisor has the responsibility to assist any employee, who comes to that individual with a complaint of harassment, in documenting and filing a complaint in accordance with this policy.

Failure to take action to stop known harassment will result in disciplinary action up to and including termination of employment.

#### **Section 14.5. Complaint Procedures.**

While the Village encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome, the Village also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, or even when such communication between the individuals has occurred, the following steps should be taken to report a harassment complaint:

1. **Reporting of the Incident:** All Village employees and officials are urged to report any suspected harassment by another employee or official to the Human Resources Director except where the Human Resources Director is the individual accused of harassment. In that case, the complaint should be reported to Assistant Village Manager. If the victim prefers to report the suspected harassment to someone of the opposite sex from that of the Human Resources Director, the complaint can be reported to the Village Manager, Village President, Village Clerk or a member of the Board of Trustees. The report may be made initially either orally or in writing, but reports made orally must be reduced to writing before an investigation can be initiated and a resolution achieved.
2. **Investigation of the Complaint:** When a complaint has been reduced to writing, the Human Resources Director, or the person receiving the complaint in accordance with section 14.5.1 above, will initiate an investigation of the suspected harassment. The investigation will include an interview with the individual(s) who made the initial report, the person(s) toward whom the suspected harassment was directed, and the individual(s) accused of the harassment. Any other person who may have information regarding the alleged harassment may also be interviewed.
3. **Preparation of a Written Report:** The person responsible for investigating the complaint shall prepare a written report. The report shall include a finding that harassment occurred, harassment did not occur, or there is inconclusive evidence as to whether harassment occurred. A copy of the report will be given to the individual(s) who made the initial report, the person(s) to whom the suspected harassment was directed, and the individual(s) accused of the harassment.

Where a hostile work environment has been found to exist, the Village will take all reasonable steps to eliminate the conduct creating such an environment.

3. **Keeping of Records and the Confidentiality of Such Records:** Employees or other persons who report incidents of harassment are encouraged to keep written notes in order to accurately record the offensive conduct. Every effort shall be made to keep all matters related to the investigation and various reports confidential. In the event of a lawsuit, however, the Village advises that those records maintained by the Village and any records maintained by the complainant may not be considered privileged from disclosure.

#### **Section 14.6. Time Frame for Reporting Harassment.**

The Village encourages prompt reporting of complaints so that rapid response and appropriate action may be taken. Thus, all complaints should be reported within six months of the alleged harassment.

#### **Section 14.7. No Retaliation.**

No Village official or employee shall take any retaliatory action against any Village employee due to a Village employee's:

1. Disclosure or threatened disclosure of any violation of this policy,
2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
3. Assistance or participation in a proceeding to enforce the provisions of this policy.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any Village employee that is taken in retaliation for a Village employee's involvement in protected activity pursuant to this policy.

**No individual making a report will be retaliated against even if a report made in good faith is not substantiated.** In addition, any witness will be protected from retaliation.

Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any Village officer or employee that the Village employee reasonably believes is in violation of a law, rule, or regulation,
2. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any Village officer or employee, or
3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition,

an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.

An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

#### **Section 14.8. Disciplinary Action.**

If any Village employee engages in conduct that violates this policy, or other conduct that the Village believes is unprofessional, that employee will be subject to discipline up to and including termination of employment. In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000 per offense.

#### **Section 14.9. Consequences for Knowingly Making a False Report of Sexual Harassment Pursuant to 5 ILCS 430/70-5.**

A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. **A false report of sexual harassment is not defined as a report made in good faith but which cannot be proven.** Rather, a false complaint of sexual harassment is defined as an intentionally made false or frivolous report or bad faith allegation. Given the seriousness of the consequences for the accused, any person who intentionally makes a false report alleging sexual harassment shall be subject to discipline up to and including termination of employment.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

#### **Section 14.10. External Procedures.**

The Village hopes that any incident of harassment can be resolved through the internal procedures outlined above. Employees of the Village, however, have the right to file formal harassment charges including charges of retaliation with the Illinois Department of Human Rights (the "IDHR") and/or with the Equal Employment Opportunity Commission (the "EEOC"). A charge with the IDHR must be filed within 180 days of the harassing incident. A charge with the EEOC must be filed within 300 days of the incident. It is unlawful for an employer to retaliate against an employee for filing a charge of harassment with the IDHR or the EEOC.

The IDHR may be conducted as follows:

Chicago: (312) 814-6200  
Springfield: (217) 785-5100

Chicago TDD: (312) 263-1579  
Springfield TDD: (217) 785-5125

The EEOC may be conducted as follows:

Chicago: (312) 353-2713  
F: Chicago: (800) 669-4000

Chicago TDD: (312) 353-2421  
Chicago TDD: (800) 669-6820

Z:\A\AlgonquinVillageof\Personnel\HarassmentPolicy.Amended.12.2017.docx



**RESOLUTION NO. 17-\_\_\_\_\_**

***A Resolution Adopting an Anti-Harassment Policy***

WHEREAS, the Illinois General Assembly has recently enacted Public Act 100-0554, an Act concerning government, which became effective immediately, dated November 16, 2017; and

WHEREAS, PA 100-0554 provides additional regulations, including an amendment to 5 ILCS 430 ILCS 70/5, Adoption by Governmental Entities, to require all governmental units to adopt an ordinance or resolution establishing a policy to prohibit sexual harassment; and

WHEREAS, said policy must include, at a minimum: (i) a prohibition on sexual harassment; (ii) details on how an individual can report an allegation of sexual harassment, including options for making a complaint of harassment to a supervisor or the Department of Human Rights; (iii) a prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under this Act, the Whistleblower Act, and the Illinois Human Rights Act; and (iv) the consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report; and

WHEREAS, pursuant to PA 100-0554, a policy has been drafted that complies with said Public Act and all prior policies prohibiting harassment, including sexual harassment shall be superseded by the Anti-Harassment Policy adopted by this resolution.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the VILLAGE OF ALGONQUIN, McHenry and Kane Counties, Illinois, that the Anti-Harassment Policy, attached hereto and made a part hereof, is hereby adopted.

Voting Aye:

Voting Nay:

Abstain:

Absent:

APPROVED:

\_\_\_\_\_  
Village President John C. Schmitt

(SEAL)

ATTEST: \_\_\_\_\_  
Village Clerk Gerald S. Kautz

Passed: \_\_\_\_\_



**VILLAGE OF ALGONQUIN**  
**PUBLIC WORKS DEPARTMENT**

– M E M O R A N D U M –

DATE: Wednesday, September 07, 2016  
 TO: Mr. Robert Mitchard, II  
 FROM: Mr. Shawn M. Hurtig  
 SUBJECT: *Letter of Recommendation – Construction Contract*  
*Cumberland Parkway Storm Sewer Revision – VoA17-11-07A*

This memo is to advise you of the recommendation I have for the bids on the **Cumberland Parkway Storm Sewer Revision** project that the Village of Algonquin is proposing. On November 7<sup>th</sup>, the Public Works Department issued the Request for Proposal to 5 contractors that are capable of conducting the proposed work (Berger, Copenhaver, Kresmary, Martam, RA Mancini). Each bid was reviewed to ensure conformance with the bid specifications (certification, security, cost, etc.). With that I have the following comments and recommendation.

**Bids**

In total 3 firms submitted a bid by the deadline of 11-17-16 @ 4:00pm, below is a summary.

<b><u>FIRM</u></b>	<b><u>Read Total</u></b>	<b><u>Calc. Total</u></b>	<b><u>Matched</u></b>	<b><u>SECURITY</u></b>	<b><u>CERT</u></b>
Martam Construction	\$39,400.00	\$39,400.00	YES	5% Bond	Yes
Copenhaver Construction, Inc.	\$53,630.00	\$53,630.00	YES	5% Bond	Yes
R.A. Mancini	\$56,800.00	\$56,800.00	YES	5% Bond	Yes

Average Cost	\$49,943.33		
Full Bid Results Spread	\$17,400.00	44%	Max \$ to Min \$Difference
Difference Avg to Lo	-\$10,543.33	-21%	Reduction in \$ from Low to Avg
Difference Avg to Hi	\$6,856.67	14%	Increase in \$ from Avg to Hi
3 Low Total Bid Average	\$49,943.33		
3 Low Total Bid Spread	\$17,400.00	35%	3 Low Bid Spread
Engineers Estimate of Probable Cost	\$32,275.00	55%	Increase in \$ from 3 Low bid to EEOC
Village Budgeted Amount	\$0.00	#DIV/0!	Increase in \$ from 3 Low bid to EEOC

## Analysis

Per the bid requirements all firms submitted a cost based on 13 line items. This project has an above average cost spread, as there is 44% cost difference from the max and min bids received. The low bid was 21% lower than the average, which required that I look into individual line items. In comparing each line item vs. the Engineers Estimate the only cost that stuck out was the Traffic Control item, as it was some 300% more than estimated. However, it is customary for contractors to put their profit and overhead into this item as it is a lump sum and is paid for incrementally. As this was the only abnormality, I am confident that the low bid pricing is appropriate.

## Budget Information:

The project has an engineer's estimate of cost of \$32,275.00. The low bid is \$7,125.00 higher than estimated, however as mentioned in the analysis this is likely the profit and OH number, and considering the small amount of the contract and the fact that the project does not have a line item for mobilization, I am confident that the low bid is a very reasonable price for the project. This project was not budgeted, as the project was a result of change order work that occurred on the Cumberland Pkwy/Copper Oaks Ph. 2 Roadway program that was completed earlier this year, in addition to an overall drainage study of the east side stormwater drainage basin to assess the need for in-line flow restrictors to protect downstream properties. As such, Public Works is suggesting transferring 40K to cover the project from the Street Improvement Capital Fund –Woods Creek Restoration (04900300-45593) project. The Woods Creek project was nearly completed in the last fiscal year and as such over half of the 600K budgeted for that project is surplus.

## Recommendation

The Village has worked with Martam Construction previously (most recently on the Manchester Lakes Outfall Revision). They are a very capable firm and highly recommended. It is for those reasons and the analysis conducted that I recommend MARTAM CONSTRUCTION for award in the amount of \$39,400.00 for the subject project contract. Please confirm this recommendation so that I may prepare the award and contract.

## Projected Project Schedule (2017)

11/07 – Notice to Bidders **(Completed)**  
11/17 – Bid Opening **(Completed)**  
12/12 – Bid Recommendation for Committee of the Whole **(Pending)**  
12/12 – Committee of the Whole Approval **(Pending)**  
12/13 – Prepare Contract Signature Documents  
12/19 – Village Board Approval  
12/20 – Awarded Contractors Contract & Insurance Due

1/2/18 – Start of Construction

1/20/18 – Completion of Construction (except for restoration, which will be conducted in Spring)



**VILLAGE OF ALGONQUIN**  
*PUBLIC WORKS DEPARTMENT*

**– M E M O R A N D U M –**

DATE: *December 1, 2017*

TO: *Tim Schloneger, Village Manager*

FROM: *Jason Schutz, Utilities Superintendent*

SUBJECT: *Letter of Recommendation – Water Meter Replacement Program*

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Throughout the last 12 months, staff has had many meetings with Sensus and Metron Farnier regarding the Water Meter Replacement Program. A one-year pilot program was implemented with Metron Farnier, installing meters in various village owned buildings and resident homes for testing. Unfortunately, staff was unsatisfied with the field test results. Also, throughout the study we encountered weak cellular reception for half the meters and not reading as they should.

As for Sensus Meters, which we have currently and been in place for the last 22 years, we can read finals on demand and do not have to get a reading that is 24 hours behind. Sensus Iperls are a mag meter with no moving parts, which have less to go wrong and beneficial with our mineralized water. The supplier has also agreed to own, provide and install, maintain and warrantee all the Flexnet radio hardware and antennas to auto-read the entire town. This represents about \$200,000 dollar negotiated savings to the Village of Algonquin, not including the annual savings to maintain and manage this equipment to be mounted on our water towers and antennae towers. Much of the meter reading equipment that has recently been installed by our staff is backwardly compatible with this reading technology, so we will not have to return to every home in the system to change meters, only to install smart-point radios to broadcast readings to the towers. Many of the smart-points are installed on the exterior of the homes.

As shown in the attachments, Metron is at a total of \$5,412,465.00 and Sensus is at a total of \$4,071,020.00. Leaving a cost difference of \$1,341,445.00. Therefore, it is my recommendation to go with Sensus FlexNet AMI System.

Funding for this project will come out of the Water/Sewer Improvement - 43370 account, and currently has \$400,000.00 budgeted for this current fiscal year. Therefore, it is recommended that the Committee of the Whole take action to move this matter forward to the Village Board for approval.



**VILLAGE OF ALGONQUIN**  
*PUBLIC WORKS DEPARTMENT*

**- M E M O R A N D U M -**

DATE: *December 8, 2017*

TO: *COTW*

FROM: *Jason Schutz, Utilities Superintendent*

SUBJECT: *Water Meter Replacement Schedule*

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Implementation of this large scale water meter replacement program is both time and funding dependent, and both will be presented to this Committee prior to bulk purchases of water meters and/or contracting with an installation company. At this time, the following schedule of replacement is anticipated, again with approvals of funding.

Year 1, current fiscal year 2017–2018

Set up infrastructure at two towers, purchase large diameter meters for commercial properties; installation with in-house staff and contracted services.

Year 2, current fiscal year 2018–2019

Purchase of remaining large diameter water meters, middle level diameter, and residential water meters for east side of Village; installation with contracted services.

Year 3, current fiscal year 2019–2020

Purchase of remaining residential water meters for west side of Village; installation with contracted services.



# QUOTATION

Date: December 1, 2017  
City/Village of: Algonquin  
Attn: Bob Mitchard  
Jason Schutz

Subject: Algonquin 2017 Quotation for Sensus FlexNet AMI System

Product	Qty.	UNIT PRICE	EXTENSION
<b>New 5/8" - 1" iPERL Water Meters</b>			
5/8" Sensus iPERL Water Meter	0	\$110.00	ea \$0.00
3/4" S Sensus iPERL Water Meter (7 1/2" LL)	953	\$110.00	ea \$104,830.00
3/4" Sensus iPERL Water Meter (9" LL)	9478	\$115.00	ea \$1,089,970.00
1" Sensus iPERL Water Meter	287	\$160.00	ea \$45,920.00
<b>Section Total:</b>	<b>10718</b>		<b>\$1,240,720.00</b>
<b>New 1 1/2" - 2" OMNI R2 Water Meters</b>			
1 1/2" Sensus OMNI R2 Water Meter With Integral Strainer, AMR Output	117	\$445.00	ea \$52,065.00
2" Sensus OMNI R2 Water Meter With Integral Strainer, AMR Output	0	\$655.00	ea \$0.00
<b>Section Total:</b>	<b>117</b>		<b>\$52,065.00</b>
<b>New 1 1/2" - 6" OMNI C2 Water Meters</b>			
1 1/2" Sensus OMNI C2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$1,000.00	ea \$0.00
2" Sensus OMNI C2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	62	\$1,136.00	ea \$70,432.00
3" Sensus OMNI C2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	14	\$1,440.00	ea \$20,160.00
4" Sensus OMNI C2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	3	\$2,666.00	ea \$7,998.00
6" Sensus OMNI C2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	3	\$4,425.00	ea \$13,275.00
<b>Section Total:</b>	<b>82</b>		<b>\$111,865.00</b>
<b>New 1 1/2" - 6" OMNI T2 Water Meters</b>			
1 1/2" Sensus OMNI T2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$0.00	ea \$0.00
2" Sensus OMNI T2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$0.00	ea \$0.00
3" Sensus OMNI T2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$0.00	ea \$0.00
4" Sensus OMNI T2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$0.00	ea \$0.00
6" Sensus OMNI T2 Water Meter With Integral Strainer, AMR Output, Pulse Output and Test Outlet	0	\$0.00	ea \$0.00
<b>Section Total:</b>	<b>0</b>		<b>\$0.00</b>
<b>FlexNet SmartPoints</b>			
510M Single Port, 3-Wire	10917	\$110.00	ea \$1,200,870.00
510M Single Port, TouchCoupler	0	\$115.00	ea \$0.00
510M Upgrade pricing (existing legacy radio trade-in)	0	\$100.00	ea \$0.00
<b>Section Total:</b>	<b>10917</b>		<b>\$1,200,870.00</b>
<b>Labor</b>			
Installation of 5/8" Meter & Transmitter	0	\$120.00	ea \$0.00
Installation of 3/4" Meter & Transmitter	10431	\$120.00	ea \$1,251,720.00
Installation of 1" Meter & Transmitter	287	\$120.00	ea \$34,440.00
Installation of 1 1/2" Meter & Transmitter	117	\$300.00	ea \$35,100.00
Installation of 2" Meter & Transmitter	62	\$315.00	ea \$19,530.00
Installation of 3" Meter & Transmitter	14	\$605.00	ea \$8,470.00
Installation of 4" Meter & Transmitter	3	\$705.00	ea \$2,115.00
Installation of 6" Meter & Transmitter	3	\$1,765.00	ea \$5,295.00
Installation of Smartpoint only	0	\$85.00	ea \$0.00
Installation of Ground Strap	0	\$45.00	ea \$0.00
<b>Section Total:</b>	<b>10917</b>		<b>\$1,356,670.00</b>

**Meter Accessories**

6501 Solid State Interrogator with GPS and Command Link	1	\$0.00	ea	\$0.00
22 Gauge 3-Conductor Meter Wire (500' Spool)	0	\$60.00	ea	\$0.00
Seal Wire (1000' Spool)	0	\$70.00	ea	\$0.00
Lead Seals	0	\$0.10	ea	\$0.00
5/8"-1" Ground Clamps	0	\$3.00	ea	\$0.00
#4 Solid Copper Ground Wire (200' Spool)	0	\$210.00	ea	\$0.00
TouchPad	0	\$7.00	ea	\$0.00

**Section Total:** **\$0.00**

**Infrastructure**

M400B Tower Gateway Basestation .	0	\$27,500.00	ea	\$0.00
M400B Tower Gateway Basestation Installation .	2	\$15,000.00	ea	\$30,000.00

**Section Total:** **\$30,000.00**

**Sensus Analytics SaaS Integration and Hosting Fees**

Sensus Analytics SA/RNI Set up Fee	1	\$15,000.00	one time	\$15,000.00
Sensus Analytics Billing Integration Fee	1	\$4,000.00	one time	\$4,000.00
Annual Sensus Analytics SA/RNI Hosting Fee 11K Services Year 1	1	\$25,225.00	annual	\$25,225.00
Annual Sensus Analytics SA/RNI Hosting Fee 11K Services Year 2	0	\$25,985.00	annual	\$0.00
Annual Sensus Analytics SA/RNI Hosting Fee 11K Services Year 3	0	\$26,765.00	annual	\$0.00
Annual Sensus Analytics SA/RNI Hosting Fee 11K Services Year 4	0	\$27,565.00	annual	\$0.00
Annual Sensus Analytics SA/RNI Hosting Fee 11K Services Year 5	0	\$28,395.00	annual	\$0.00

**Section Total:** **\$44,225.00**

**Sensus Analytics Consumer Portal**

Sensus Analytics Consumer Portal Set up Fee	1	\$6,250.00	one time	\$6,250.00
Sensus Analytics Consumer Portal Integration Fee	1	\$12,500.00	one time	\$12,500.00
Annual Sensus Analytics Consumer Portal Hosting Fee <1500 Services	1	\$7,000.00	annual	\$7,000.00
Annual Sensus Analytics Consumer Portal Hosting Fee >1500 Services	0	\$3.00	per user	\$0.00
Consumer Portal Unlimited Text Messages	1	\$255.00	annual	\$255.00

**Section Total:** **\$26,005.00**

**Extended Warranties, Training, Management Fee**

Annual Infrastructure Maintenance Agreement Year 2	2	\$0.00	per M400	\$0.00
RNI Training (two days)	1	\$6,350.00	one time	\$6,350.00
Consumer Portal Training	1	\$2,250.00	one time	\$2,250.00

**Section Total:** **\$8,600.00**

**Overall Total:** **\$4,071,020.00**

**NOTE:**

- \* Propagation study will determine Basestation required inside/outside smartpoint installation.
- \* Basestation Pricing includes installation and startup.
- \* Pricing and installation does not include communication link between Basestation to (RNI).
- \* Utility responsible to provide electric at Basestation.
- \* Pricing and installation does not include software interface to billing system.
- \* Hosting Services subject to a 3% annual increase after Year 5.
- \* Consumer Portal Hosting Fees (5 Year) subject to a 3% annual increase after Year 5.
- \* Final project pricing shall be determined by actual meter quantities supplied and installed.
- \* Installation pricing are for 'Labor Only' to replace meter with same lay length meter.
- \* Additional plumbing determined case by case basis.
- \* Labor assumes no responsibility on ground wire sizing
- \* Pricing does not include Payment/Performance Bond.

Prices are good until **March 31, 2018**. Delivery can be made from stock to within twelve (12) weeks from receipt of your purchase order. Our terms of payment are net thirty (30) days.

Sincerely,

Mike Murphy  
Territory Manager

Meter Model/Size	# Meters	2.5 yr. Price/unit Locked	
Spectrum 30 3/4"	10,431	295	\$3,077,145
Spectrum 50 1"	287	545	\$156,415
Spectrum 88 1 1/2"	117	803	\$93,951
Spectrum 130 2"	62	1076	\$66,712
Spectrum 175 3"	14	1839	\$25,746
Spectrum 500 4"	3	2817	\$8,451
Spectrum 1000 6"	3	3956	\$11,868
	10,917	Meters Total	\$3,440,288

\*Appurtenances (Spools, etc. - additional)

Costs <b>AFTER 10 yr.</b> Data Plan:	Cost/Meter/Month	Meters on plan	Expected Meter Life	Total Additional Annual Data Cost	10 yrs.(additional) Data (20 Yr. Life)
Data	\$0.69	10917	15	\$90,392.76	\$903,927.60



# **Project Estimate Water Meter & AMR Installation Services**

**Provided to:**

**Village of Algonquin, IL  
Water & Sewer Utilities  
110 Meyer Dr.  
Algonquin, IL 60102**

**Attn: Robert Mitchard, Public Works Director  
Ph. (847) 658-2700  
Email: [bobmitchard@algonquin.org](mailto:bobmitchard@algonquin.org)**

**Services Provided By:**

**MASS INSTALLATION, INC.  
916 Pleasant St., Unit #3  
Norwood, MA 02062**

## **Confidential Estimate**

### **Notification of Proprietary Business Information:**

This document and any accompanying files contain proprietary information and is intended solely for the use of the individual or entity to which it is addressed. Disclosing, copying or distributing the contents of this proposal is strictly prohibited unless approved in writing by Mass Installation, Inc.

December 13, 2016

Mr. Robert Mitchard, Utilities Superintendent  
Water & Sewer Utilities  
110 Meyer Dr.  
Algonquin, IL 60102

Subject: Village of Algonquin, Estimate for Management and Installation of Residential and Commercial Water meters, AMI Network and all Public Relation efforts involved in deployment and completion of both systems.

Dear Mr. Mitchard,

Mass Installation, Inc. (MII), of Norwood, Massachusetts, is providing a Project Estimate for Management and installation services of new residential and commercial water meters and AMI Set-up and Deployment at the Village of Algonquin. While this is just an "estimate", these figures are very close to actual project expense and based on current Plumbing prevailing wage rates and all relevant fees.

The following document may be used for budgetary purposes and list requested services along with basic assumptions and clarifications toward what may be included in subject unit prices. Additional information regarding the qualifications of Mass Installation, Inc., our staff, and our plan of operation can be forwarded, if so desired. There may be other areas where MII can provide assistance that is not specifically detailed in this Project Estimate so please do not hesitate Contact me, Mark Travis (781-727-6464) should you have any questions.

In closing, let me extend our full appreciation for considering Mass Installation, Inc. as resources for the Village of Algonquin.

Thank you,

Mark Travis  
Vice President  
Office: (800) 933-1360  
[mtravis@massinstallation.com](mailto:mtravis@massinstallation.com)

## Given:

1. The Village of Algonquin has requested Mass Installation, Inc. (MII) provide pricing for performance of field services and Installation of Metron-Farnier Water meters AMI Cellular Endpoints. Along with All other Project Management and Public relation requirements pertaining to said project at the Village of Algonquin (hereinafter the "Village"), in the service territory of the Village.
2. The base Project is for:
  - a. Supplying Project management and supervision. For the Complete Deployment and interface of all residential and commercial water meters and AMI System set-up and interface
  - b. Removing existing Village water meters, 5/8" - 6" in size, and installing new meters, and Cellular Endpoints as supplied by the Village.
  - c. Installing Village supplied Cell modules on the newly installed meters and verifying proper operation. Ensuring adequate RSSI before leaving each location
  - d. Taking pictures both before and after the meter exchange include a picture of the removed meter register for final reading purposes.
  - e. Collecting the GPS reference address for each subject meter to allow for better interface into the Water scope software.
  - f. Providing an electronic means of data capture and data reporting.
  - g. Report all daily exchange data at end of each work day.
  - h. Return a scrap to the Village for disposal.
3. The Village will provide a "Project Liaison" for the Project to assist MII.
4. MII will provide an "Installation Manager" for the Project as well as all field and QC staff. Mass Installation sets itself apart from other contractors in that we firmly believe in helping the local economy and local Veterans. As a Veteran owned business enterprise we make a commitment to hire and train local personnel to ensure public tax payer money not only goes back into the community through materials and infrastructure improvement, but that we give people a skill they can use long after the project is over. With this does comes added times and cost but it is something we have been standing behind for 35 years and have seen the good it can do.
5. Work is for replacement of 10,917 residential and commercial water meters located at both inside and outside locations. Some meters will be at scattered locations, may have plumbing issues to be resolved, and/or may be difficult to access.
6. MII has provided a line item in the budgetary pricing to allow for Commercial meter surveys rightsizing surveys, to ensure that the proper sized meter is being installed into each location.
7. The maximum project duration is thirty (30) months with 90% completion within 18.
8. Work will be performed under the current Plumber Prevailing Wage determination as in place at the beginning of the Project.

9. MII will provide all training and testing of all new local hires as well as Background/ FBI checks, Drug screening and in home etiquette training. This is one of the main items covered in the mobilization fee.

## Pricing Notes and Assumptions:

Alconquin, IL		Budgetary Installation Pricing		
Item	Quan.	Description	Unit \$	Total \$
A1	10431	Removal of existing 3/4" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$159.00	\$1,658,529.00
A2	287	Removal of existing 1" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$159.00	\$45,633.00
A3	117	Removal of existing 1.5" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$239.00	\$27,963.00
A4	62	Removal of existing 2" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$317.00	\$19,654.00
A5	14	Removal of existing 3" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$1,269.00	\$17,766.00
A6	3	Removal of existing 4" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$1,269.00	\$3,807.00
A7	3	Removal of existing 6" meter, installation of new Metron-Farnier Watermeter and Cellular endpoint with RSSI verification for each setting	\$1,875.00	\$5,625.00
A8	100	Surveys	\$347.00	\$34,700.00
A9	100	NS Horly	\$195.00	\$19,500.00
A10	100	NS hourly 2 man	\$390.00	\$39,000.00
A11	1	Mobilization ( Cost of Travel, Set-up, Trai	\$100,000.00	\$100,000.00
Total				\$1,972,177.00

***Service Offering***

1. Experienced, full-time Installation Manager
2. Restoration of work sites to pre-existing conditions
3. Labor associated with water meter and AMR installation.
4. Provision of work order management system (hardware and software)
5. Data management
6. Digital photos of meter face showing meter reading prior to removal
7. Provision of staff to dispatch work orders
8. Provision of call center during deployment for customer support and scheduling appointments  
10 lines dedicated to the Village in addition to on-line scheduling
9. Inventory receipt and control program
10. Quality assurance program
11. Training program
12. Standard hiring practices to include background checks, drug testing, etc.
13. Vehicles with appropriate signage
14. Miscellaneous tools and safety equipment
15. Uniforms, badges, etc.
16. Health and safety program
17. 10 Hour OSHA Certified staff
18. One year workmanship warranty

***Assumptions, General***

1. Pricing assumes all quantities stated will be awarded and performed by Mass Installation.
2. Mass Installation assumes that all meters will be provided in cycle and route-read order.
3. Mass Installation will provide and distribute customer communications.
4. Mass Installation assumes that all printed communication materials, such as notification letters and door hangers will be approved by the utility; cost of producing notices will be borne by MII.
5. Mass Installation assumes that all customer accounts can be accessed by automobile or service truck.
6. Hard to access, parked cars, required appointments, and other deviations from normal will not relieve MII of its obligation to complete all installs.
7. Mass Installation assumes it will not be responsible for the removal, transportation, or disposal of lead seals or other hazardous waste; these articles will be returned to the utility.
8. Pricing holds firm for the duration of project limited to one (1) year from date of award. Any work beyond that term may bear additional charges
9. The Project Estimate is based on a five day work week; however, Mass Installation reserves the right to work Saturdays as necessary in the event of delays.
10. Mass Installation assumes utility will provide assistance for hard to access accounts or difficult water utility customers whom after 9 attempts still refuse installation.
11. Nonstandard (NS) Work: For any work that cannot be done under a standard installation consideration will be billed to the nearest 1/4 hour.
12. Any material or hardware expense that will be at direct cost plus 20% handling and tracking.

***Assumptions, Contract/Billing***

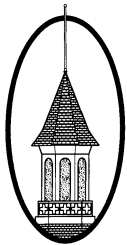
1. Mass Installation assumes there will be a force-majeure clause in the contract.
2. Mass Installation assumes no retainage will be withheld from payments.
3. Completed work will be billed monthly and payment per those terms identified.
4. Mass Installation will provide a Performance Bond and Certificate of Insurance.
5. Prices do not include any local or use taxes that may be applicable.
6. Prices do not include any work beyond that work specifically noted in this Project Estimate.
7. Pricing does not include permit fees if applicable.
8. Pricing is stated in U.S. Dollars

***Summary Notes:***

MII envisions no more than 90-120 days to complete the start-up phase of work, this being establishing a facility, acquiring temporary housing for MII corporate personnel to train and stay at throughout the course of the project as we perform Random unannounced spot checks on all MII installation personnel to ensure guaranteed customer service. The full deployment project will take 18 months for 90% completion, and 30 Months or less to 100% complete; This extended time period is always given because it is Mass Installations philosophy to stay until we get 100% of the project completed as long as we have the utilities support we give ourselves the additional time in the event that there is a higher percentage than normal of those residents or businesses that are not always easy in gaining access to. The date begins with the Notice to Proceed from the utility.

MII requires no less than thirty (30) days' notice to activate staff and respond to on-site work.





**VILLAGE OF ALGONQUIN**  
*PUBLIC WORKS DEPARTMENT*

**– M E M O R A N D U M –**

DATE: December 4, 2017

TO: Tim Schloneger, Village Manager

FROM: Michele Zimmerman, Assistant Public Works Director

SUBJECT: *Water Softener Salt Bid*

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Bids were opened on December 1, 2017 for the purchase of water softener for calendar years 2018 and 2019. The Village participated in a joint bid for this material through the McHenry County Municipal Purchasing Initiative, which was led by the City of Woodstock. The joint bid included the communities of Algonquin, Cary and Woodstock.

Only one valid bid was received for this material purchase. Midwest Salt out of West Chicago, IL was the low bidder using the delivery method that is required by the Village of Algonquin per our plant configuration, which is a truck with a controlled flow slotted tailgate.

The attached bid tabulation shows the bid pricing. Algonquin uses an average of 80 tons of softener salt in a calendar year. The price per ton for 2018 is \$106.00 and for 2019 is \$111.00. This is much cheaper than the current vendor that we use who charges \$139.00 per ton.

Money was budgeted for this in the Water Operating Fund. Therefore, it is our recommendation that the Committee of the Whole take action to move this matter forward to the Village Board for approval of Midwest Salt as the supplier for water softener salt for years 2018 & 2019 per the bid price.

**City of Woodstock Department of Public Works**  
**2018 Water Softener Salt Joint Bid**

BIDDER	BASE BID YR 1 (3,280 TONS EST)		BASE BID YR 2 (3,280 TONS EST)		Comments/ Exceptions	
	Unit Price	Annual Cost	Unit Price	Annual Cost		
Morton Salt Chicago, IL	No bid	No bid	No bid	No bid		
Univar USA Kent, WA	No bid	No bid	No bid	No bid		
Compass Minerals Overland Park, KS	\$105.00				Bid documents not enclosed	
Midwest Salt West Chicago, IL	\$101.19	\$331,903.20	\$106.53	\$349,418.40		

BIDDER	Controlled Flow Slotted Tailgate (25 ton capacity)					
	CARY (400 tons, est)		ALGONQUIN (80 tons, est)		WDSTK (2,800 tons, est)	
	2018	2019	2018	2019	2018	2019
Morton Salt Chicago, IL	No bid	No bid	No bid	No bid	No bid	No bid
Univar USA Kent, WA	No bid	No bid	No bid	No bid	No bid	No bid
Compass Minerals Overland Park, KS						
Midwest Salt West Chicago, IL	\$106.00	\$111.00	\$106.00	\$111.00	\$96.00	\$101.00

BIDDER	Pneumatic Tanker (25 ton capacity)					
	CARY (400 tons, est)		ALGONQUIN (80 tons, est)		WDSTK (2,800 tons, est)	
	2018	2019	2018	2019	2018	2019
Morton Salt Chicago, IL	No bid	No bid	No bid	No bid	No bid	No bid
Univar USA Kent, WA	No bid	No bid	No bid	No bid	No bid	No bid
Compass Minerals Overland Park, KS						
Midwest Salt West Chicago, IL	N/A	N/A	N/A	N/A	\$106.75	\$112.75

BIDDER	Truck & Pup					
	CARY (400 tons, est)		ALGONQUIN (80 tons, est)		WDSTK (2,800 tons, est)	
	2018	2019	2018	2019	2018	2019
Morton Salt Chicago, IL	No bid	No bid	No bid	No bid	No bid	No bid
Univar USA Kent, WA	No bid	No bid	No bid	No bid	No bid	No bid
Compass Minerals Overland Park, KS						
Midwest Salt West Chicago, IL	\$117.00	\$123.00	N/A	N/A	N/A	N/A

\*\*No bid bond or performance bond required.

**Bid Opening: 10:00 am, Friday, December 1, 2017**  
**Council Consideration: Tuesday, December 19, 2017**



**VILLAGE OF ALGONQUIN**  
**PUBLIC WORKS DEPARTMENT**

**– M E M O R A N D U M –**

DATE: Thursday, December 07, 2017  
TO: Mr. Robert Mitchard, II  
FROM: Mr. Shawn M. Hurtig  
SUBJECT: *Letter of Recommendation – Civil Engineering Ph. 1 Design Services*

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Bob,

I have reviewed the Proposal for the Phase 1 Design Engineering Services as indicated in the Request for Proposal for the Souwanas Creek Reach 2 Improvement (VoA17-09-14A) project in the Village of Algonquin. This proposal was sent only to HR Green under your direction. The proposal was reviewed for compliance with the Request for Proposal. With that I have the following comments and recommendation.

The RFP was delivered to each company & contact listed below:

<u>Firm Name</u>	<u>First Name</u>	<u>Last Name</u>	<u>Street Address</u>	<u>Sub Address</u>	<u>City</u>	<u>State</u>
HR Green	Akram	Chaudhry	420 N. Front St	Suite 100	McHenry	IL

The following firm has responded:

<u>Firm Name</u>	<u>Price</u>	<u>Add. 1</u>	<u>Add. 2</u>	<u>Attach C</u>	<u>Attach D</u>
HR Green	69,888.00	Yes	Yes	Yes	Yes

**Proposal Review:**

Following is the criteria I used above those mentioned in the RFP for my recommendation.

1) Reviewed each proposal for conformance to the RFP requirements:

HR Green had a handful of alterations to the insurance requirements, but nothing to significant. The Village has made this modifications on previous project with this consultant

2) Reviewed the cost of each proposal to meet the scope of services outlined in RFP:

The consultant made note of one alteration they made on the proposal. They have suggested moving the Easement & ROW Acquisition Documentation scope to Ph. 2 services, and have only put a fee in for some Draft work on this scope.

3) Reviewed the technical aspects of the proposals, including any sub-consultants:

HR Green was sent this request exclusively as they are the lead consultant on the adjacent Village roadway project (Scott, Souwanas, & Schuett) which involves the replacement of the existing CMP that takes Souwanas Creek under Souwanas Drive. As part of the roadway project they were required to utilize Applied Ecological Solutions to work on the change the discharge angle of the creek from the proposed culvert. The Souwanas Creek Reach 2 project will continue that work and thus keep this project team together.

4) Other items:

This project also includes potential off road multi-use path routes from Souwanas Drive. As noted above the Souwanas Drive project is headed up by HR Green whom is already working on the starting and end points of the Souwanas Drive multi-use path.

**Budget Analysis**

The Village budgeted \$70,000.00 in the Streets Capital Improvement fund code 04900300 - 42232 for this project. The proposal comes in at just under this budgeted amount.

**Recommendation**

Based on my analysis of the proposal and having worked with HR Green on several projects over the last few years, I am confident in their ability to complete the scope of the project. Therefore the recommendation is that **HR Green** be considered by the COTW in the amount of **\$69,888.00** . This cost is based on a Not to Exceed contract.

The project is scheduled for award by the Village Board on December 19<sup>th</sup>, 2017. Thus, the recommendation should go before the Committee of the Whole on December 12<sup>th</sup>, 2017.

Should you have any questions, comments, or concerns, please do not hesitate to contact me.



► 420 North Front Street | Suite 100 | McHenry, IL 60050  
Main 815.385.1778 + Fax 815.385.1781

HRGREEN.COM

December 1, 2017

Mr. Shawn M. Hurtig  
Village of Algonquin  
Public Works Department  
110 Meyer Drive  
Algonquin, IL 60102

RE: Souwanas Creek Reach 2 Improvements (VoA17-09-14A)

Dear Mr. Hurtig:

Thank you for your email dated November 3, 2017 regarding Request or Proposal (RFP) for the above referenced project. Attached with this letter please find the Proposal Task Items Fee Summary for the requested scope of work.

Note that HR Green has partnered with Applied Ecological Services (AES) to act as our sub-consultant for this project. In general, AES will complete the tree survey, tree removal and preservation plan including triangular parcel restoration plan, provide design input in relation to developing conceptual and preliminary plans for the creek and attend kickoff, design review and public meeting. HR Green will complete all necessary topographic survey for the project limits, complete hydrologic and hydraulic study of the creek including defining limits of the floodplain, prepare conceptual and preliminary plans for the project, evaluate multi-use path alignment and attend kickoff, design review and public meetings. HR Green is the prime consultant and will manage the overall project schedule and budget.

The scope of services to be provided is generally in accordance with the RFP with the following discussion below to further clarify the scope items. When no revisions are required, it has been noted as such.

#### PHASE #1 SCOPE ITEMS

##### **Task 1A - Design Management, Coordination, Communication and Reporting**

No major scope revisions are noted. Representatives from HR Green and Applied Ecological Services (AES) will attend the Kickoff Meeting and two (2) Design Review Meetings. Hours have also been budgeted for project management and administration of the contract.

##### **Task 1Bi- Biii - Research**

No scope revisions are noted.

##### **Task 1Biv – Topographic Survey**

No major scope revisions are noted except that we propose that the topographic survey be obtained of sufficient ground elevations to produce one foot (1') contouring as opposed to two foot (2') noted in the request for proposal. Not only will the 1' contouring be helpful in determining creek restoration and/or relocation limits but can also be used for final design for preparing contract plans and specifications. Please see attached exhibit for the purposes of project location exhibit and limits of work in relation to creek restoration, tree survey and topographic survey. Note that a tree survey is only proposed within the triangular parcel and along the creek between Minnehaha Trail and Manito Trail ROW. A full topographic survey is proposed for the triangular parcel and along the creek restoration limits. Additional topographic survey along Minnehaha Trail and Nakomis Trail will be obtained in sufficient detail to establish the ROW limits, contouring and for the purposes of evaluating multi-use path alignment. The topographic survey will extend 10' beyond the ROW.

##### **Task 1E-1 through 1E-6 – Environmental Research**

###### **Task 1E-1 – Environmental Research**

No scope revisions are noted for Task 1E-1.

**Task 1E-2 – Phase I Environmental Site Assessment (ESA)**

An environmental site assessment will be made as part of the site visit and via visual observations of any Recognizable Environmental Condition (REC). The scope will not include any data search or sampling for the purposes of determining and/or confirming presence of REC. We recommend that if any additional sampling or testing is necessary (such as for Clean Construction Demolition Debris or CCDD), that it be completed as an amendment to the scope or in final design.

**Task 1E-3 – Wetland/Waters of the United States Assessment**

AES will conduct a Wetland/Waters of the U.S. delineation and prepare a Wetland/Waters of the U.S. report per the Village's scope of work. A Jurisdictional Determination will be submitted to the US Army Corps of Engineers as part of this project.

**Task 1E-4 - Floodway/Floodplain Determination**

Based on previous experience working along Souwanas Creek, HR Green has determined that the watershed tributary to the project area is greater than 640 acres and is an unmapped floodplain. The watershed tributary to the project area means that the stream is an un-designated floodway and is under the jurisdiction of the IDNR 3700 rules. HR Green will complete hydrologic and hydraulic modeling of the stream within the project limits for the purposes of delineating the 100-year floodplain elevations and limits. This will further help in evaluating location of the multi-use path and compliance with Part 3700 rules. The floodplain limits will be mapped and shown on project exhibits.

**Task 1E-5 – Threatened and Endangered Species Evaluation**

Threatened and Endangered Species Evaluation will be submitted and the IDNR Eco-CAT review fee in the amount of \$512 is included in the lump sum fee for this task. However, potential ecological surveys required by the IDNR and/or the USFWS are not included in the scope and if required will be completed as an amendment to the contract or in final design phase.

**Task 1E-6 – Cultural and Archeological Survey**

A Cultural and Archaeological submittal to the IHPA will be made per the scope. However, an archaeological survey (if required by the IHPA) is not included in this scope and if required will be completed as an amendment to the contract or in final design phase.

**Task 1E-7 – Tree Survey**

No scope revisions are noted. AES will complete a tree survey per the scope. Additionally, AES will tag all "desirable" native trees less than 6" DBH for preservation. GPS coordinates of the surveyed trees will be collected and processed into a GIS shapefile. Please see attached exhibit for the limits of tree survey.

**Task 1H – Conceptual Plans**

No scope revisions are noted. HR Green and AES will work collaboratively to develop conceptual plans for the creek restoration/relocation and stabilization. HR Green will develop base sheets and cross sections of the project area using results of the topographic survey. HR Green and AES will conduct a field assessment to identify potential stream stabilization and restoration opportunities as well as ecological restoration opportunities for adjacent buffer areas. HR Green will determine the feasibility of bike path alternatives.

**Task 1I – Permit Requirements Report**

No scope revisions are noted. HR Green will provide a written report itemizing all necessary permits required by any approving agencies. AES will review the report for concurrence.

**Task 1Ji – Preliminary Plans – Primary Pages**

No scope revisions are noted.

**Task 1Jii – Preliminary Plans – Secondary Pages**

No scope revisions are noted.

**Task 1K – Engineer's Estimates**

No scope revisions are noted.

**Task 1L – Public Meeting**

No scope revisions are noted. Representatives from HR Green and AES will attend the public meeting.

**Task 1M – Easement and ROW Acquisition Documents**

The request for proposal asks for survey exhibits for any required property acquisitions, and permanent or temporary easements including drafting of legal descriptions and required field work. Approximately 25 parcels may be affected along the east side of the creek along Stratford Lane. Preparing an individual legal description for these parcels may be better if done in Phase 2 at which point we can better define the limits of the required easements based on a more detailed design. In addition, any exhibits and legal description prepared in Phase 1 may also be subject of revisions in Phase 2. We recommend that the scope for this be modified to prepare an exhibit only to show the required easements and that the actual plat of survey, easement exhibits and legal description be completed in Phase 2.

Please let me know if the above seems to be consistent with the request for proposal for the Souwanas Creek Reach 2 Improvements project. Thank you once again for the opportunity to provide these services to the Village. If you have any questions or would like more detailed information about HR Green, please do not hesitate to contact me.

Sincerely,

HR GREEN, INC.



Ajay Jain, PE, CFM

Vice President, Practice Leader – Water Resources

AJ/LG/dmw

Attachments:      Souwanas Creek Phase 2 Improvements (VoA 17-09-14A) Proposal Task Items Fee Summary  
                             Souwanas Creek Phase 2 Improvements (VoA 17-09-14A) Scope of Services

# VILLAGE OF ALGONQUIN

## REQUEST FOR PROPOSAL

FOR

### SOUWANAS CREEK REACH 2 IMPROVEMENTS

#### Proposal Task Items

<u>Task #</u>	<u>DESCRIPTION</u>	<u>UNIT OF MEASURE</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1A	Ph. 1Design Mgmt.& Kickoff Meeting/ Review Meeting / Schedule	LUMP	1	\$4,225	\$4,225
1Bi - Biii	Research	LUMP	1	\$826	\$826
1Biv	Topographic. Survey	LUMP	1	\$13,090	\$13,090
1E-1-6	Environmental Research	LUMP	1	\$12,247	\$12,247
1E-7	Tree Survey	LUMP	1	\$8,358	\$8,358
1H	Conceptual Plans	LUMP	1	\$14,915	\$14,915
1I	Permit Requirements Report	LUMP	1	\$290	\$290
1Ji	Preliminary Plans – Primary Pgs	LUMP	1	\$9,279	\$9,279
1Jii	Prelim Plans. – Secondary Pgs	LUMP	1	\$1,892	\$1,892
1K	Engineers Estimates (60% & 90%)	LUMP	1	\$3,145	\$3,145
1L	Public Meeting (Plan Presentation)	EACH	1	\$795	\$795
1M	Easement & ROW Acquisition Documentation	LUMP	1	\$826	\$826
****	<b>TOTAL</b>	<b>NTE</b>			\$69,888

Company: HR Green, Inc.



# VILLAGE OF ALGONQUIN

Signature: Ajay Jain Date: 12/1/17

Print Name: AJAY JAIN

Title: VICE PRESIDENT



**VILLAGE OF ALGONQUIN**  
**PUBLIC WORKS DEPARTMENT**

**– M E M O R A N D U M –**

DATE: December 7, 2017

TO: Tim Schloneger, Village Manager

FROM: Robert G. Mitchard, Public Works Director

SUBJECT: Downtown Streetscape and Utility Work; Design-Build Services  
Recommendation

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Tim, attached you will find the Design-Build Guaranteed Maximum Price and Standard Form of At-Risk Management Contractor for Designer-Led Design-Build Project for Phase 1A of the Downtown Streetscape and Utility Work. The contract is about \$500,000 dollars higher than originally discussed due to some scope changes during our initial review that added some utility work to the project, some changes and enhancement to site furnishings and electrical and lighting work, extensions to the project limits on S. Main Street and W. Washington Street, and minor other modifications.

The design-build concept is a recommendation that I am making in order to bring this project in on-time, within budget (as stated), and within the high expectation of the Board of Trustees, stakeholders, and our residents and businesses. Burke, LLC will be handling all design, bidding, contractor selection (with our approval), project construction management, and PR communications and marketing (through a third party vendor) under the Guaranteed Maximum Price of \$9,091,653. An owners allowance of \$500,000 is also included, but will only be expended should there be significant changes in the project scope that would add work task to the job.

The most attractive part of this delivery method is the fact that the Village of Algonquin, as owner will be teaming with Burke, LLC and the contractors to deliver a quality project. In traditional design-bid-build delivery, the Village would be attempting to manage, at least, five separate contracts and five different contractors and their sub-contractors in this very tight and restrictive construction site. The design-build option allows us to funnel all construction contracts and related activities through Burke, LLC, making to overall management of the contract much more streamlined, comprehensive and coordinated. Any construction savings realized through the design-build team effort will be shared equally between Burke, LLC and the Village of Algonquin, as owner.

Currently, in the Capital Improvement Budgets, we have \$2,150,000 budgeted in the Street Improvement Fund for streetscape related improvements including dry utility lowering, storm sewer work, and street construction; and in the Water and Sewer Improvement Fund there is \$1,500,000 for water main replacement and \$1,300,000 for sanitary sewer upgrades included for the downtown work. The remainder of the work will be budgeted in the FY 2018/2019 budget year in order to complete the work in Stage 1A.

We recommend that the Committee of the Whole take the necessary action on the contract with Burke, LLC in the amount of \$9,091,653 and move that motion on to the Village Board of Trustees for approval. Work will begin as soon as the contract is approved and bids for services can be collected and considered by Burke, LLC. The contract is expected to be completed on, or before, December 15, 2018.



*Design / Build*

**BURKE, L.L.C.**

9575 West Higgins Road • Suite 600 • Rosemont, Illinois 60018-4920 • TEL (847) 823-0500 • FAX (847) 823-0520

December 6, 2017

Village of Algonquin  
Public Works Department  
110 Meyer Drive  
Algonquin, IL 60102

Attention: Robert Mitchard - Director of Public Works

Subject: Downtown Streetscape – Design/Build Proposal

Dear Mr. Mitchard:

Burke, LLC is pleased to submit the attached Design / Build Guaranteed Maximum Price (GMP) Proposal for the Downtown Streetscape - Stage 1A - Main Street. The scope of work in this proposal includes the construction and construction management required for the undergrounding of the overhead (dry) utility lines from the bridge to Edward Street and new water main, sanitary sewer, and drainage improvements between the bridge and Algonquin Road; including all applicable private utility service upgrades. The scope of work also includes streetscape improvements between the bridge and Algonquin Road, Main Street Plaza improvements, and improvements to the Mineral Springs seating area. All work will be completed in accordance with the approved plans and exhibits. An owner's allowance has also been included for any additional work or material changes requested by the Village. In addition to the proposal, we have included a Summary Schedule of Values and preliminary schedule.

We recognize that the redevelopment of downtown Algonquin is expected to span over several years and with numerous stakeholders, business interests and anticipated community disruptions, developing and executing a thoughtful and thorough coordination and communication plan is essential to its overall success. For this reason, Burke, LLC plans to team with Metro Strategies, Inc. to best implement a fully customized project coordination and outreach plan, including the development and maintenance of a standalone project website.

We greatly appreciate the opportunity to submit this professional services proposal. If you have any questions or need any additional information, please do not hesitate to contact me as I will be the primary contact person for this project as the Principal-in-Charge.

Sincerely,

William D. Crosson, PE  
Principal



**STANDARD FORM OF AT-RISK CONSTRUCTION MANAGEMENT  
CONTRACT FOR DESIGNER-LED DESIGN-BUILD PROJECT**

**OWNER:** Village of Algonquin, Illinois  
2200 Harnish Dr  
Algonquin, IL 60102

**CONSTRUCTION MANAGER:** Burke, LLC  
9575 West Higgins Road  
Suite 600  
Rosemont, IL 60018-4920

**PROJECT:** Downtown Streetscape Phase I

**CONTRACT DATE:**

**GUARANTEED MAXIMUM  
PRICE:** \$9,091,653

**OWNERS ALLOWANCE:** \$500,000

**TOTAL CONTRACT PRICE:** \$9,591,653

**SUBSTANTIAL COMPLETION DATE:** December 21, 2018

## **ARTICLE 1 - RELATIONSHIP OF THE PARTIES**

1.1 Relationship. The Relationship between the Owner and the Construction Manager with regard to the Project shall be one of good faith and fair dealing. The Construction Manager agrees to provide the design, construction, management and administration services as set forth in greater detail below.

1.2 Engineer. The Engineer for the Project is Christopher B. Burke Engineering, Ltd., a separate company and legal entity closely affiliated with the Construction Manager. The Owner, Engineer and Construction Manager had previously jointly entered into a Price and Schedule Guarantee for the Project. When fully executed, this Contract shall supersede the Owner's and Construction Manager's obligations in the Price and Schedule Guarantee, which merges into this Contract and is no longer separately enforceable.

## **ARTICLE 2 - DEFINITIONS**

2.1 Contract Documents. The Contract Documents consist of:

.1 Change Orders and written amendments to this Contract signed by both the Owner and Construction Manager;

.2 This Contract;

.3 Surveys, geo-technical information and other information provided by the Owner pursuant to this Contract;

.4 The Plans prepared by 1) Engineering Enterprises, Inc.: Downtown Streetscape Water Main Improvements Stage 1A; 2) Christopher B. Burke Engineering, Ltd.: Dry Utility Replacement Project Phase I; 3) Main Street Streetscape Project Stage 1A; including any Addenda thereto.

.5 Village of Algonquin Standard Certifications  
a. Business Organization  
b. Certification of Eligibility  
c. Equal Employment Opportunity  
d. Illinois Prevailing Wage Act  
e. Contractor's Certification  
f. Apprenticeship and Training Program Certification

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

2.2 Day. A "Day" shall mean one calendar day.

2.3 Hazardous Material. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup.

2.4 Owner. The Owner for the purposes of this Contract is the Village of Algonquin, Illinois, an Illinois municipal corporation.

2.5 Not Used.

2.6 Subcontractor. A Subcontractor is a person or entity who has an agreement with the Construction Manager to perform any portion of the Work, and includes vendors or material suppliers but does not include the Engineer, any separate contractor employed by the Owner or any separate contractor's subcontractor.

2.7 Substantial Completion. The Owner shall determine substantial completion of the Work, or of a designated portion of the Work, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can begin to occupy or utilize the Project, or the designated portion, for the use for which it is intended.

2.8 Subsubcontractor. A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.9 The Work. The Work consists of all of the construction, procurement and administration services to be performed by the Construction Manager and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

### **ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES**

3.1 Commencement. The Construction Manager may commence the Work upon execution of this Contract. The parties contemplate that by mutual agreement, the Construction Manager may commence certain portions of the Work, such as procurement of long lead-time items, design and site preparation, prior to execution of this Contract in reliance on the Price/Schedule Guarantee.

3.2 General Requirements. The Construction Manager shall perform those portions of the Work that the Construction Manager customarily performs with its own personnel. All other portions of the Work shall be performed by Subcontractors or under other appropriate agreements with the Construction Manager. The Subcontractor selection process shall be as set forth in Article 4. The Construction Manager shall exercise reasonable skill and judgment in the performance of the Work. The Construction Manager shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of this Contract which govern performance of the Work. Construction Manager is responsible for the performance of all design, design management, construction and construction management services, and providing all facilities, supplies, material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the plans and specifications.

3.3 Schedule. The Construction Manager shall maintain in written form a schedule of the Work. The schedule shall indicate the dates for the start and completion of various stages of the construction and shall be revised as required by the conditions of the Work. The schedule may contain dates when information, decisions and approvals are required from the

Owner; and both the Owner and the Construction Manager agree to use their best efforts to comply with the time requirements of the schedule.

**3.4 Coordination and Communication Plan.** Metro Strategies, Inc., a planning, policy and public affairs firm, will assist the Construction Manager in crafting an approach to specifically address the project coordination and communication needs for the redevelopment of downtown Algonquin. This will include developing a project website, an outreach and communication plan, and hosting public meetings. The scope will also include a project logo, slogan and branding to ensure that all communication is easily identifiable. The Construction Manager will also be responsible for scheduling and conducting meetings at which the appropriate parties can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

**3.5 Reports.** The Construction Manager shall provide monthly written reports to the Owner on the progress of the Work which shall include the current status of the Work in relation to the construction schedule as well as adjustments to the construction schedule necessary to meet the Substantial Completion date. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner upon reasonable advance notice.

**3.6 Cost Control.** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities and progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner in the monthly written reports.

**3.7 Permits.** The Construction Manager shall assist the Owner in securing the permits necessary for construction of the Project.

**3.8 Safety.** The Construction Manager shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and local safety laws and regulations to prevent accidents or injuries to persons on or adjacent to the Project site. The Construction Manager, directly or through its Subcontractors, shall erect and properly maintain necessary safeguards for the protection of workers and the public. However, the Construction Manager shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from any work at the Project site being performed by someone other than the Construction Manager, a Subcontractor or Subsubcontractor. The Engineer shall have no responsibility for safety programs or precautions in connection with the Work and shall not be in charge of or have any control over any construction means, methods, techniques, sequences or procedures.

Construction Manager shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury or loss to other property at the site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, foundations and foundation tiebacks and utilities not designated for removal, relocation or replacement in the course of construction, as well as the Work and materials and equipment on site to be incorporated into the Work.



Construction Manager assumes direct liability for all damages to private property arising from the execution of the Work by the Construction Manager or any of its Subcontractors, and agrees to promptly resolve all claims directly with the property owners.

Construction Manager agrees that Owner has the right at any time or times to withhold from any payment that may be or become due Construction Manager such amount as may reasonably appear necessary to compensate the Owner for any claims by adjacent land owner for property damage arising from the execution of the Work, and to defend and hold Owner harmless from such claims.

Construction Manager shall not be liable for existing infrastructure deficiencies on private property. It is understood by the Owner that unforeseen upgrades to existing infrastructure will be required to construct the improvements and that the Construction Manager will be paid for these upgrades either at the unit prices in the contract or on a time and materials basis. The Owner and Construction Manager will work jointly to identify, coordinate and obtain permission for all work on private property. The Owner, with input from the construction Manager, will have the final say on what is an existing condition and what occurs as a result of the Construction Manager's actions.

**3.9 Cleanup.** The Construction Manager shall keep the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Construction Manager or its Subcontractors shall remove from the site of the Work all construction equipment, tools, surplus materials, waste materials and debris.

**3.10 Hazardous Materials.** If the Construction Manager encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site of the Work by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Upon receipt of the Construction Manager's written notice, the Owner shall investigate and proceed pursuant to the law and applicable regulations. Upon providing a copy of the Construction Manager's written notice, the Construction Manager will be permitted to continue to suspend performance of the Construction Manager's services in the affected area provided, however, that Construction Manager shall return to work at Owner's discretion and declaration either that the material encountered does not require remediation or that it has been addressed in accordance with the law. If the Construction Manager suspends services to longer than 21 days, the Owner may terminate this Agreement, and the Construction Manager shall be compensated for services performed prior to the suspension of Construction Manager's services. Under no circumstances, unless required by law, shall the Construction Manager report the existence of any hazardous materials or substances to any other governmental entity or agency without the Owner's prior written consent. Unless otherwise provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any unforeseen hazardous materials or substances encountered at the site, provided, however, Owner is not responsible for any hazardous material or substance releases or spills introduced to the site by Construction Manager, subcontractor or anyone for whose acts they may be liable.

3.11 Intellectual Property. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights arising out of any patented materials, methods or systems required or specified by the Owner.

3.12 Completion. At or promptly after the date of Substantial Completion, the Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the Owner; collect all written warranties and equipment manuals and deliver them to the Owner; with the assistance of the Owner's maintenance personnel, direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing; provide the Owner with a set of record drawings which the Construction Manager shall have maintained throughout the Project; and prepare and forward to the Owner a punch list of items of Work yet to be completed.

3.13 Indemnification. To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold the Owner from all claims for bodily injury and property damage (other than to the Work itself and other property insured under the Owner's builder's risk or other property insurance) and all other claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to the negligent or willful acts or omissions by the Construction Manager, Subcontractors, Subsubcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the Contractor to indemnify the Owner, their officials, agents and employees for their own negligent acts or omissions. The terms of this indemnification shall survive completion or termination of this Contract. Construction Manager shall indemnify and save Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

3.14 Overtime Work. Except in connection with the safety or protection of persons, or the work, or property at the site or adjacent thereto, all work at the site shall be performed during regular working hours; and the Construction Manager will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the Owner's written consent given after prior written notice. Regular working hours shall be a consecutive eight-hour period between the hours of seven o'clock (7:00) A.M. and five o'clock (5:00) P.M., Monday through Friday. No loading, unloading, opening, closing or other handling of crates, containers, building materials or the performance of construction work shall be performed before the hour of seven o'clock (7:00) A.M. and after the hour of nine o'clock (9:00) P.M.

3.15 Selection of Labor. The Construction Manager shall comply with all Illinois statutes pertaining to the selection of labor.

3.16 Employment of Illinois Workers During Periods of Excessive Unemployment. Whenever there is a period of excessive unemployment in Illinois, which is defined

herein as any month immediately following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded five percent as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Construction Manager shall employ only Illinois laborers. "Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident.

Other laborers may be used when Illinois laborers as defined herein are not available, or are incapable of performing the particular type of work involved, if so certified by the Construction Manager and approved by the Owner. The Construction Manager may place no more than three of his regularly employed non-resident executive and technical experts, who do not qualify as Illinois laborers, to do work encompassed by this Contract during a period of excessive unemployment.

This provision applies to all labor, whether skilled, semi-skilled or unskilled, whether manual or non-manual.

**3.17 Equal Employment Opportunity.** During the performance of this Contract, the Construction Manager agrees as follows:

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- .2 That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- .3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service.
- .4 That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Construction Manager's obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

- .5 That it will submit reports as required by the Owner of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Owner or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Owner's Rules and Regulations.
- .6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- .7 That it will include verbatim or by reference the provisions of this clause in every subcontract so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract, the Construction Manager will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Owner and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Construction Manager will not utilize any subcontractor declared by the Owner to have failed to comply with this Equal Employment Opportunity provision.

3.18 Sexual Harassment Policy. The Construction Manager shall have in place and shall enforce a written sexual harassment policy in compliance with 775 ILCS 5/2-105(A)(4).

3.19 Veterans Preference Act. The Construction Manager shall comply with all laws relating to the employment preference to veterans in accordance with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*).

3.20 Wages of Employees on Public Works. This Contract is subject to "An act regulating wages of laborers, mechanics and other workers employed in any public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works," approved June 26, 1941, as amended, except that where a prevailing wage violates a Federal law, order, or ruling, the rate conforming to the Federal law, order, or ruling shall govern.

Not less than the prevailing rate of wages as found by the Owner or the Illinois Department of Labor or determined by a court on review shall be paid to all laborers, workers and mechanics performing work under this contract. These prevailing rates of wages are included in this Contract.

The Construction Manager and each subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers and mechanics employed by them on this contract, and also showing the actual hourly wages paid to each of such persons.

If requested, the Construction Manager and each subcontractor shall provide to the Owner, the certified payroll as required by the Prevailing Wage Act. The Construction Manager and each subcontractor shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract.

- 3.21 Confidentiality of Information. Any documents, data, records, or other information relating to the project and all information secured by the Construction Manager from the Owner in connection with the performance of services, unless in the public domain, shall be kept confidential by the Construction Manager and shall not be made available to third parties without written consent of the Owner, unless so required by court order.
- 3.22 Steel Procurement. The steel products, as defined in Section 3 of the Steel Products Procurement Act (30 ILCS 565/3) used or supplied in the performance of this Contract or any subcontract shall be manufactured or produced in the United States unless the Construction Manager certifies in writing that (a) the specified products are not manufactured or produced in the United States in sufficient quantities to meet the Owner's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the Owner's requirements; or (b) obtaining the specified products, manufactured or produced in the United States would increase the cost of the Contract by more than 10%, or the application of the Steel Products Procurement Act (30 ILCS 565/1 et seq.) is not in the public interest.
- 3.23 Certifications. The Construction Manager shall provide Owner with a signed Contractor's Certification, dated evenly herewith, certifying that the Construction Manager is complying with and shall comply with the specific statutes and laws required in connection with a public works contract entered into by an Illinois unit of local government.
- 3.24 Field Office. The Construction Manager shall obtain a field office within the Village's corporate limits for the duration of the project. The field office will be for the exclusive use of the Construction Manager and its Subcontractors.

#### **ARTICLE 4 - SUBCONTRACTS**

- 4.1 General. Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors or Subsubcontractors. The Construction Manager shall be responsible for management of the Subcontractors in the performance of their Work.
- 4.2 Selection. The Construction Manager shall subcontract with Subcontractors and with suppliers of materials or equipment fabricated to a special design for the Work and, shall manage the delivery of the work to the Owner. The Owner may designate specific persons or entities from whom the Construction Manager shall subcontract. However, the Owner may not prohibit the Construction Manager from subcontracting with other qualified bidders.
- .1 If the Construction Manager recommends to the Owner the acceptance of a particular subcontractor who is qualified to perform that portion of the Work and has submitted a price which conforms to the requirements of the Contract Documents without reservations or exceptions, and the Owner requires that a different price be accepted, then a Change Order shall be issued adjusting the

Contract Time and the Guaranteed Maximum Price by the difference between the price of the subcontract recommended by the Construction Manager and the subcontract that the Owner has required be accepted.

- .2 The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection.
- 4.3 Assignment. The Construction Manager shall provide for assignment of Subcontract Agreements in the event that the Owner terminates this Contract for cause. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties, if any.
- 4.4.1 Subcontracts. The Construction Manager shall prepare all Subcontracts and shall have full discretion to negotiate their terms, subject to the Owner's reasonable requirements or objections as to form and content. Construction Manager shall bind every subcontractor to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's portions of the Work.
- 4.5 Foreign Corporation. Foreign (non-Illinois) corporations shall procure from the Illinois Secretary of State a certificate of authority to transact business in Illinois in accordance with 805 ILCS 5/13.

#### **ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES**

- 5.1 One-Year Warranty. The Construction Manager warrants that all work performed hereunder shall be of good workmanship and the materials and equipment furnished under this Contract will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials; and the Construction Manager agrees to correct all construction performed under this Contract which proves to be defective in workmanship or materials. These warranties shall commence on the date of Substantial Completion of the Work or of a designated portion thereof and shall continue for a period of one year therefrom or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.
- 5.2 Materials Specified By Owner. The products, equipment, systems or materials incorporated in the Work at the direction or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer and are not otherwise warranted under this Contract.
- 5.3 Other Warranties. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

## ARTICLE 6 - OWNER'S RESPONSIBILITIES

### 6.1 Information and Services. The Owner shall provide:

- .1 All necessary information describing the physical characteristics of the site, including survey, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
- .2 Inspection and testing services during construction as required by the law or as mutually agreed;
- .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
- .4 any other information or services stated in the Contract Documents as being provided by the Owner.

### 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.

### 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.

### 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.

### 6.5 Owner's Representative. The Owner's Representative for this Project is Owner's Public Works Director who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice; provided, however, the Public Works Director shall not have authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time. Authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the Village Council. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing. Change orders must be approved in accordance with Section 33E-9 of the Illinois Criminal Code

## ARTICLE 7 - CONTRACT TIME

- 7.1 Execution Date. The parties contemplate that this Contract will be fully executed on or before the Contract Date listed on page 1. A delay in the Owner's execution of this Contract which postpones the commencement of the Work may require a Change Order equitably adjusting the date of Substantial Completion.
- 7.2 Substantial Completion. The date of Substantial Completion of the Work shall be the completion date identified on the first page of this Contract, as adjusted in accordance with the provisions of this Contract. Time shall be of the essence of this Contract.
- 7.3.1 Delays. If causes beyond the Construction Manager's control delay the progress of the Work, then the Contract Price and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner's preventing the Construction Manager from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event that delays to the Project are encountered for any reason, the Owner and the Construction Manager both agree to undertake reasonable steps to mitigate the effect of such delays.
- 7.3.2 Inclement Weather. The Contract Time shall not be extended due to normal inclement weather. Unless the Construction Manager can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time and using the most recent ten-year average of accumulated record mean values from climatological data compiled by the United States Department of Commerce National Oceanic and Atmospheric Administration for the locale of the project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an adverse material effect on the Contract Time, the Construction Manager shall not be entitled to an extension of the Contract Time. If the total accumulated number of calendar days lost due to inclement weather from the start of work until substantial completion exceeds the total accumulated number to be expected for the same time period from the aforesaid data and the Owner grants the Construction Manager an extension of time, the Contract Time shall be extended by the appropriate number of calendar days.
- 7.5 Responsibility for Completion. The Construction Manager, through its Subcontracts shall furnish such employees, materials and equipment as may be necessary to ensure the prosecution and completion of the Work in accordance with the construction schedule. If the Work is not being performed in accordance with the construction schedule and it becomes apparent from the schedule that the Work will not be completed with the Contract Time, the Construction Manager shall, as necessary to improve the progress of the Work, take some or all of the following actions, at no additional cost to the Owner:
- .1 Increase the number of workers in such crafts as necessary to regain the lost progress;



- .2 Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment or any combination of the foregoing to regain the lost progress.

In addition, the Owner may require the Construction Manager to prepare and submit a recovery schedule demonstrating the Construction Manager's plan to regain the lost progress and to ensure completion within the Contract Time. If the Owner finds the proposed recovery plan is not satisfactory, the Owner may require the Construction Manager to undertake any of the actions set forth in this paragraph 7.5, without additional cost to the Owner.

- 7.6 Failure to Prosecute the Work. The failure of the Construction Manager to substantially comply with the requirements of paragraph 7.5 may be considered grounds for a determination by the Owner, that the Construction Manager has failed to prosecute the Work with such diligence to ensure completion of the Work within the Contract Time and that pursuant to paragraph 11.2 that the Construction Manager has materially breached this Contract.

## ARTICLE 8 - PAYMENT

- 8.1 Guaranteed Maximum Price. The sum of the Cost of Work and the Construction Manager's Fee including professional services is guaranteed by the Construction Manager not to exceed the price listed on page 1, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. The Construction Manager's Fee including professional fees, general conditions, insurance, overhead and profit is identified on **Exhibit A - Summary Schedule of Values**. The Construction Manager's Fee shall be increased proportionally with the Cost of Work for any Change Orders in accordance with this Contract. The Contractor's Fee will not be reduced as the result of a Change Order. In the event the Cost of Work plus the Construction Manager's Fee including professional services shall total less than the Guaranteed Maximum Price as adjusted by Change Orders, the resulting savings shall be shared equally between the Owner and the Construction Manager, and the Owner shall make payment of the Construction Manager's portion upon Final Completion of the Work. In the event that the Cost of Work plus the Construction Manager's Fee including professional services exceeds the Guaranteed Maximum Price as adjusted by Change Orders, then the Owner shall pay no more than the Guaranteed Maximum Price as adjusted by Change Orders. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

1. The Guaranteed Maximum Price is based on the following scope of work as depicted in the Plans prepared by Christopher B. Burke Engineering, Ltd. and Engineering Enterprise, Inc., including any Addenda thereto.
2. Unit prices used for the actual work will be determined by the bidding process identified in Article 4 of this Agreement.

3. Assumptions on which the Guaranteed Maximum Price are based, are as follows:
- .1 The site will drain entirely by gravity. No provisions for lift stations are included.
  - .2 Hazardous materials are not present at the site.
  - .3 Reasonable time has been allotted for acquiring permits from involved agencies. Durations to acquire permits are beyond the Contractor's control.
  - .4 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. However, such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

8.2 Compensation. The Guaranteed Maximum Price is the sum of the Cost of the Work plus the Construction Manager's Fee as identified in this Contract, subject to adjustment in accordance with the provisions of this Contract.

8.3 Progress Payments. Prior to submitting the first Application for Payment, the Construction Manager shall provide a Schedule of Values reasonably satisfactory to the Owner consisting of a breakdown of the Contract Price by trade or appropriate category. On or before the fifteenth day of each month after the Work has been commenced, the Construction Manager shall submit to the Owner an Application for Payment in accordance with the Schedule of Values based upon the Work completed and materials stored on the site or at other locations approved by the Owner. Within thirty (30) days after receipt of each monthly Application for Payment, the Owner shall approve or disapprove the Application for Payment. When safety or quality assurance testing is necessary before consideration of the Application for Payment, and such testing cannot be completed within thirty (30) days after receipt of the Application for Payment, approval or disapproval of the Application for Payment shall be made upon completion of the testing or within sixty (60) days after receipt of the Application for Payment, whichever occurs first. If an Application for Payment is disapproved, the Owner shall notify the Construction Manager in writing. If an Application for Payment is approved, the Owner shall pay directly to the Construction Manager the appropriate amount for which Application for Payment was made, less amounts previously paid by the Owner within thirty (30) days after approval. The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed to be an acceptance of any Work not conforming to the requirements of the Contract Documents.

- .1 With each Application for Payment the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner to demonstrate that cash disbursements or obligations already made or

incurred by the Construction Manager on account of the Work equal or exceed (1) progress payments already received by the Construction Manager less (2) that portion of those payments attributable to the Construction Manager's Fee plus (3) payrolls and other costs for the period covered by the present Application for Payment.

- .2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require and shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- .3 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- .4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
  - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
  - .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee

as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Except with the Owner's prior approval, payments to the Construction Manager and Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.
- .6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

8.4 Progress Payment Documentation and Withholding of Payments due to Subcontractor Notice Received. The Construction Manager shall supply and each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;
- (B) duly executed waivers of mechanics' and materialmen's liens of the money due or to become due herein, establishing payment to the Subcontractor or material supplier of all such obligations to cover the full amount of the Application for Payment from each and every Subcontractor and suppliers of material or labor to release the Owner of any claim to a mechanic's lien, which they or any of them may have under the mechanic's lien laws of Illinois. Any payments made by the Owner without requiring strict compliance to the terms of this paragraph shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the terms of this approach as a condition of later payments. The Construction Manager shall indemnify and save the Owner harmless from all claims of Subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the Work;
- (C) sworn statements or lien waivers supporting the Application for Payment submitted late by the Construction Manager to the Owner will result in the Application for Payment not being processed until the following month.

- (D) Owner may, after having served written notice to the Construction Manager either pay unpaid bills, of which Owner has written notice, direct, or withhold from Construction Manager's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Construction Manager shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to the Construction Manager. In paying any unpaid bills of Construction Manager, Owner shall be deemed the agent of Construction Manager and any payment so made by Owner, shall be considered as payment made under the Contract by OWNER to Construction Manager and OWNER shall not be liable to Construction Manager for any such payment made in good faith.

Construction Manager agrees that all payments made by the OWNER shall be applied to the payment or reimbursement of the costs with respect to which they were paid, and not to any pre-existing or unrelated debt between Construction Manager and OWNER or between the Construction Manager and any subcontractors or suppliers.

- 8.5 Late Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et. seq.*)
- 8.6 Title. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances upon receipt of such payment by the Construction Manager.
- 8.7 Final Payment. Final Payment shall be due and payable when the Work is fully completed. Before issuance of any final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been or will be paid or otherwise satisfied. In accepting final payment, the Construction Manager waives all claims except those previously made in writing and which remain unsettled. In making final payment, the Owner waives all claims except for outstanding liens, improper workmanship or defective materials appearing within one year after the date of Substantial Completion, and terms of any special warranties required by the Contract Documents.
- .1 The amount of the final payment shall be calculated as follows:
- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

- .2 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either make final payment as requested to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding part or all of the requested final payment.
- .3 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 8.7 and not excluded by Paragraph 8.8 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

8.8 Cost of the Work. The term "Cost of the Work" shall mean all costs incurred by the Construction Manager and the cost of professional services in the proper performance of the Work. The Cost of the Work shall include the items set forth below.

- .1 Labor costs.
  - .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site locations.
  - .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when engaged in performance of the Work.
  - .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work.
  - .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work.

- .2 Subcontract costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.
- .3 Costs of materials and equipment incorporated in the completed construction.
  - .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
  - .2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.
- .4 Costs of other materials and equipment, temporary facilities and related items.
  - .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
  - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
  - .3 Costs of removal of debris from the site.
  - .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
  - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .5 Miscellaneous costs.
  - .1 That portion directly attributable to this Contract of premiums for insurance and bonds.

- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
- .5 Expenses and time incurred investigating potential changes in the Work.
- .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.
- .7 Data processing costs related to the Work.
- .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .9 Legal, and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
- .10 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.
- .6 Other costs. Other costs incurred in the performance of the Work.
- .7 Emergencies and repairs to damaged or nonconforming work.
  - .1 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
  - .2 Costs incurred in repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers.



8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.

- .1 The Cost of the Work shall not include professional services or the following:
  - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
  - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.
  - .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.
  - .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
  - .5 The Construction Manager's Fee.
  - .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
  - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded.
- .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

8.10 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this

Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

**8.11 Payment Approval.** The Owner may disapprove a payment, in whole or in part, or because of subsequent observations, nullify any progress payment previously made, to such extent as may be necessary, in its opinion, to protect its interests due to:

- .1 Defective work not remedied;
- .2 Third party claims or reasonable evidence indicating the probable filing of such claims;
- .3 Failure to make payments to subcontractors for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 Failure to prosecute the Work with sufficient workers, materials, and/or equipment;
- .6 Failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 9 - CHANGES**

**9.1 Change Orders.** Changes in the Work which are within the general scope of this Contract may be accomplished by Change Order without invalidating this Contract. A Change Order is a written instrument, issued after execution of this Contract signed by the Owner and Construction Manager stating their agreement upon a change and any adjustment in the Guaranteed Maximum Price and/or the date of Substantial Completion. The Construction Manager shall not be obligated to perform changed Work until the Change Order has been executed by the Owner and Construction Manager.

**9.2 Costs.** An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices as set forth in this Contract or as subsequently agreed (but if the original quantities are altered to a degree that application of previously agreed unit prices would be inequitable to either the Owner or the Construction Manager, the Unit Prices shall be equitably adjusted);
- .2 A mutually accepted, itemized lump sum;
- .3 Time and materials.

Construction Manager's fee shall be proportionately increased in all Change Orders that increase the Guaranteed Maximum Price, but shall not be proportionately decreased by a Change Order that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will

be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Contract Time shall be equitably adjusted.

- 9.3 Unknown Conditions. If in the performance of the Work, the Construction Manager finds latent, concealed or subsurface physical conditions which differ from the conditions the Construction Manager reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Contract, then the Guaranteed Maximum Price and/or the Date of Substantial Completion shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.
- 9.4 Claims. For any claim for an increase in the Guaranteed Maximum Price and/or an extension in the date of Substantial Completion, the Construction Manager shall give the Owner written notice of the claim within twenty-one (21) days after the Construction Manager first recognizes the condition giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Guaranteed Maximum Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.

## **ARTICLE 10 - INSURANCE AND BONDING**

- 10.1 The Contractor's Insurance. The Construction Manager and each of its Subcontractors shall provide insurance as outlined in the attached "Insurance Requirements" document provided by the Village of Algonquin. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:
- .1 workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
  - .2 under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Construction Manager's employees;
  - .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Construction Manager;
  - .4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Construction Manager or for damages to any other person;
  - .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the work itself and other property insured by the Owner;

- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle;
  - .7 contractual liability claims involving the Construction Manager's indemnity obligations; and
  - .8 loss due to errors or omission with respect to provision of professional services under this Agreement, including engineering services.
- 10.2 The Construction Manager's Commercial General and Automobile Liability Insurance shall be written for not less than the following limits of liability:

**Commercial General Liability Insurance**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg.	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage (any one fire)	\$ 100,000
Medical Expenses, each person	\$ 10,000

**Comprehensive Automobile Liability Insurance**

Combined Single Limit, each accident	\$1,000,000
or	
Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000

**Worker's Compensation & Employer's Liability**

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$ 500,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 500,000 each employee

**Commercial Umbrella/Excess Liability**

Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

**Professional Liability**

Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

- 10.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy. The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be provided to the Owner prior to commencement of the Work.

Products and Completed Operations insurance shall be maintained for a minimum period of at least one year after the date of Substantial Completion or final payment, whichever is earlier.

- 10.4 Primary Insurance. The Commercial General Liability and Automobile Liability Insurance policies required under this contract shall be endorsed to include, as additional insured, the OWNER, its elected and appointed officials, officers and employees, and owners of property where the Work is to be completed. Prior to the commencement of any Work, the Construction Manager shall provide the Owner with Certificates of Insurance for all insurance required pursuant to this Article. Any insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer. Construction Manager shall not allow any Subcontractor to commence or continue any part of the Work until and unless such Subcontractor provides and has in force insurance coverages equal to those required of Construction Manager by this Article, including, but not limited to, naming the OWNER as an additional insured for liability arising out of the subcontractor's work.
- 10.5 Acceptability of Insurers. The insurance carrier used by the Construction Manager shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and shall meet the minimum requirements of the State of Illinois.
- 10.6 Reserved.
- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.
- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and

consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the Construction Manager's Fee and all other professional services, and payment of the obligations arising thereunder. Bonds may be obtained through the subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the Construction Manager's Fee and all other professional services. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.
- 10.10 Performance and Payment Guarantee. In lieu of the Village not requiring payment and performance bonds by the Construction Manager pursuant to 30 ILCS 550/1, et. seq, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

## **ARTICLE 11 - TERMINATION**

- 11.1 By the Construction Manager. Upon seven (7) days written notice to the Owner, the Construction Manager may terminate this Contract for any of the following reasons:
- .1 If the Work has been stopped for a thirty (30) day period;
    - a. under court order or order of other governmental authorities having jurisdiction;
    - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or
    - c. because of the Owner's failure to pay the Construction Manager in accordance with this Contract;
  - .2 if the Work is suspended by the Owner for thirty (30) days;
  - .3 if the Owner materially delays the Construction Manager in the performance of the Work without agreeing to an appropriate Change Order; or

- .4 if the Owner otherwise materially breaches this Contract.

Upon termination by the Construction Manager in accordance with this paragraph, the Construction Manager shall be entitled to recover from the Owner all damages allowed under Illinois law. In addition, the Construction Manager shall be paid an amount calculated as set forth in paragraph 11.3.

- 11.2 By the Owner for Cause. If the Construction Manager fails to perform any of its obligations under this Contract, the Owner may, after seven (7) days written notice, during which period the Construction Manager fails to perform or to begin to perform such obligation, undertake to perform such obligations itself. The Contract Price shall be reduced by the cost to the Owner of performing such obligations. Additionally, upon seven (7) days written notice to the Construction Manager and the Construction Manager's surety, if any, the Owner may terminate this Contract for any of the following reasons:

- .1 if the Construction Manager utilizes improper materials and/or inadequately skilled workers;
- .2 if the Construction Manager does not make proper payment to laborers, material suppliers or subcontractors and refuses or fails to rectify same;
- .3 if the Construction Manager fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Construction Manager otherwise materially breaches this Contract.

If the Construction Manager fails to cure within the seven (7) days, the Owner, without prejudice to any other right or remedy, may take possession of the site and complete the Work utilizing any reasonable means. In this event, the Construction Manager shall not have a right to further payment until the Work is completed. If the Construction Manager files a petition under the Bankruptcy Code, this Contract shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement or, if there has been a default, the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Contract or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code. In the event the Owner exercises its rights under this paragraph, upon the request of the Construction Manager, the Owner shall provide a detailed accounting of the costs incurred by the Owner.

- 11.3 Termination by the Owner Without Cause. If the Owner terminates this Contract other than as set forth in Paragraph 11.2, the Owner shall pay the Construction Manager for the Cost of all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in

connection with the Work or as a result of the termination of this Contract. As a condition of receiving the payments provided under this Article 11, the Construction Manager shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Construction Manager's rights and benefits to the Owner, including the execution and delivery of required papers.

- 11.4 Suspension By The Owner For Convenience. The Owner for its convenience may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate. Adjustments shall be made for increases in the Guaranteed Maximum Price and/or the date of Substantial Completion caused by suspension, delay or interruption. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Contract is applied to render an equipment adjustment.

## ARTICLE 12 - DISPUTE RESOLUTION

- 12.1 Step Negotiations. The parties shall attempt in good faith to resolve all disputes promptly by negotiation, as follows. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Management representatives of both parties one level above the Project personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to such management representatives, or if no meeting has taken place within fifteen (15) days after such referral, the dispute shall be referred to senior managers under the aforesaid procedure. If the matter has not been resolved by such senior managers, both parties must agree to initiate binding arbitration as provided hereinafter. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and applicable state Rules of Evidence.

- 12.2 Arbitration. Except as provided in this paragraph, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, one arbitrator, administered by the American Arbitration Association under its Construction Industry Arbitration Rules or JAMS Dispute Resolution, at the Village Hall 2200 Harnish Dr. Algonquin, Illinois, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Owner may elect, at its exclusive option, to file a lawsuit by rather than arbitration with regard to amounts due Owner of \$10,000 or less and \$200,000 or more and to enforce equitable remedies such as injunctive relief and mechanic lien rights. In the event of such election, each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any



litigation directly or indirectly arising out of under or in connection with this Contract.

In the event of arbitration or litigation of this Contract between Owner and Construction Manager, the non-prevailing party shall pay all attorneys' fees and expenses incurred by prevailing party, as determined by the Arbiter or judge in connection with the respective arbitration or litigation.

Until final resolution of any dispute hereunder, Construction Manager shall diligently proceed with the performance of this Contract as directed by Owner.

- 12.3 Continued Performance of the Work. In the event of any dispute, the Construction Manager shall continue to perform the Work and maintain its progress pending final determination of the dispute, provided the Owner places a sum equal to 150% of the amount in dispute in an escrow account, reasonably satisfactory to both parties, which specifies that the escrow agent shall distribute the escrow sum between the parties in accordance with any agreement or court judgment entered resolving the dispute.
- 12.4 Required in Subcontracts. The Construction Manager shall include the provisions of this Article 12 in all Subcontracts into which it enters.

#### **ARTICLE 13 – LIQUIDATED DAMAGES**

- 13.1 Late Completion. In the event that the Work is not Substantially Complete by the date set forth in this Contract, then promptly after receiving Final Payment, the Construction Manager shall pay to the Owner as liquidated damages a sum equal Two Hundred Dollars (\$200) for each day that the Work is late in reaching Substantial Completion.

#### **ARTICLE 14 - MISCELLANEOUS**

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.
- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, fax or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be governed by the laws of the State of Illinois.

- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 14.7 Existing Contract Documents. A list of the Plans, Specifications and Addenda in existence at the time of execution of this Contract is attached as an exhibit to this Contract.
- 14.8 Illinois Freedom of Information Act. The Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to Work performed under this Agreement are considered a public record of the Owner; and therefore, the Construction Manager shall review its records and promptly produce to the Owner any records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Construction Manager shall produce to the Owner such records within three (3) business days of a request for such records from the owner at no additional cost to the Owner.

Owner:

Village of Algonquin  
2200 Harnish Dr  
Algonquin, IL 60102


Contractor:

Burke, LLC  
9575 W. Higgins Road, Suite 600  
Rosemont, IL 60018

By: \_\_\_\_\_ Date: \_\_\_\_\_

By:  Date: 12/6/2017  
Principal

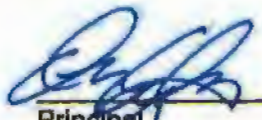
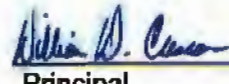
Attest: \_\_\_\_\_ Date: \_\_\_\_\_


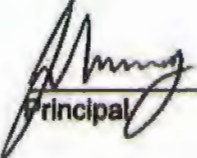
By:  Date: 12/06/2017  
Principal

### Guarantee

Pursuant to paragraph 10.10 of this Agreement, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

By:  Date: 12/6/17 By:  Date: 12/6/17  
Principal Principal

By:  Date: 12/6/2017 By:  Date: 12/06/2017  
Principal Principal

By:  Date: 12/6/17 By:  Date: 12/06/17  
Principal Principal

By:  Date: 12-16/17 By:  Date: 12/6/2017  
Principal Principal



**Main Street  
Phase I  
Improvements  
Algonquin, Illinois  
Exhibit A - Summary Schedule of Values**



Item	Contract Value		
<b>Drainage Improvements</b>	<b>\$</b>	<b>267,940</b>	<b>3%</b>
Drainage Construction	\$	237,115	
Construction Management	\$	18,969	
General Conditions (Insurance OH and Profit)	\$	11,856	
<b>Water Main and Sanitary Sewer Improvements</b>	<b>\$</b>	<b>1,598,950</b>	<b>17%</b>
Water Main Construction	\$	1,415,000	
Construction Management	\$	113,200	
General Conditions (Insurance OH and Profit)	\$	70,750	
<b>Dry Utility Undergrounding Improvements</b>	<b>\$</b>	<b>1,927,468</b>	<b>20%</b>
ComEd Infrastructure	\$	821,300	
Electric Service Infrastructure	\$	209,324	
AT&T Infrastructure	\$	174,880	
Comcast Infrastructure	\$	123,270	
Alternate Electric	\$	193,010	
Restoration	\$	183,940	
Construction Management	\$	136,458	
General Conditions (Insurance OH and Profit)	\$	85,286	
<b>Electrical Streetscape Improvements</b>	<b>\$</b>	<b>798,345</b>	<b>8%</b>
Electrical Streetscape Construction	\$	700,000	
Electric Car Charging Station	\$	6,500	
Construction Management	\$	56,520	
General Conditions (Insurance OH and Profit)	\$	35,325	
<b>*Civil Streetscape Improvements</b>	<b>\$</b>	<b>4,423,950</b>	<b>48%</b>
Civil Streetscape Construction	\$	3,915,000	
Construction Management	\$	313,200	
General Conditions (Insurance OH and Profit)	\$	195,750	
<b>Project Coordination and Communication Plan</b>	<b>\$</b>	<b>75,000</b>	<b>1%</b>
Metrostrategies	\$	75,000	
<b>Owners Allowance</b>	<b>\$</b>	<b>500,000</b>	<b>5%</b>
Owners Allowance	\$	500,000	

<b>Contract Price \$ 9,591,653</b>
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\* Work includes: 1) Mineral Springs with Seating  
2) Main Street Plaza

