

AGENDA  
COMMITTEE OF THE WHOLE  
June 26, 2018  
2200 Harnish Drive  
Village Board Room  
- AGENDA -  
7:30 P.M.

Trustee Steigert – Chairperson  
Trustee Sosine  
Trustee Spella  
Trustee Jasper  
Trustee Brehmer  
Trustee Glogowski  
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**
4. **General Administration**
  - A. Consider an Ordinance Repealing Ordinance No. 2017-O-12, Small Cell Antenna/Tower Siting Provisions, Repealing Chapter 5.19, Amending Chapter 39 and Providing for the Regulation of and Application for Small Wireless Facilities in Village Rights of Way
5. **Public Works & Safety**
  - A. Consider an Agreement with A-Lamp Construction for the Gaslight Roadway Improvement Project
  - B. Consider an Agreement with Applied Ecological Services, Inc. for Phase 1 Engineering Services for the Woods Creek Reach 4 Project
6. **Executive Session**
7. **Other Business**
8. **Adjournment**

LAW OFFICES  
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June 13, 2018

**VIA EMAIL: [timschloneger@algonquin.org](mailto:timschloneger@algonquin.org)**

Tim Schloneger, Manager  
VILLAGE OF ALGONQUIN  
2200 Harnish Drive  
Algonquin, IL 60102

**RE: Small Wireless Facilities**

Dear Tim:

As you know, the new Small Wireless Facilities Deployment Act (Public Act 100-0585)(the "Act") became effective June 1<sup>st</sup> of this year. The new Act makes small cell devices a permitted use both in municipal rights-of-way and in exclusively commercial and industrial districts, although it does not fully preempt zoning in other zoning classifications. The Act also sets time limits and sets procedures that municipalities must follow when applications for small cell placements in these districts are received, and it requires municipalities to accept small cell devices on their municipally-owned poles in the right of way as well as on privately held poles in these districts.

The Act establishes maximum fees that can be charged both for each application and for the actual use of municipally-owned poles. The Act does not permit municipalities to recover costs in excess of the application fee amount regardless of the cost to process any application. Small Cell applications can be denied only if certain specific terms or conditions have not been met.

The Act gives Municipalities until the end of July to adopt ordinances implementing the provisions of that Act, and the IML has drafted a model "Small Cell Ordinance" to help its members implement the requirements of the Act. This model ordinance was drafted with input from many groups and individuals as well as from members of the telecommunications industry. As a result, future small cell facility applicants should be relatively familiar with the provisions of the new ordinance.

Most of the provisions of the model ordinance are mandated by state law, but we have adapted the ordinance for your consideration and use with those modifications that are permitted by the Act. The new Small Cell Ordinance will be added as a new section of your existing code provisions for Utility Construction in the Right of Way (often referred to as the "Right of Way Ordinance"). The Small Cell Ordinance also modifies provisions of your Right of Way Ordinance to specifically reference these special requirements for small wireless facilities.

Here are the other primary changes we have made to the model ordinance to adapt it for your use along with our comments on related issues associated with implementing the new Act.

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Repeal of Earlier Small Cell Ordinance: This new Small Cell Ordinance will repeal and replace the small cell changes you made to your code last year via Ordinance 2017-O-12 because the Act pre-empts many of the provisions contained in that ordinance.

Repeal of Earlier Right of Way Ordinance: In the course of reviewing your code, we found that the provisions of Section 5.19 of your code contained an earlier version of a right of way ordinance that was largely pre-empted by the later-passed right of way ordinance contained in Chapter 39. Accordingly, we have proposed deleting Section 5.19. However, there is one provision in 5.19 relating to gas pipes that is not contained in the newer Chapter 39, so we have included an amendment adding that to existing Chapter 39. If you have any concerns about deleting Section 5.19, please let us know.

Design Standards: The Act allows municipalities to require applicants to comply with “written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements that are identified...in an ordinance, written policy adopted by the governing board of the authority, a comprehensive plan, or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district...”. There are many options and models for design standards, but in this draft ordinance we have provided some relatively simple design standards. If you have any specific concerns about design standards in historic districts, we should address those here as well.

Variances for Height for New Poles, Spacing for Ground Mounted Equipment and Undergrounding: The Act permits authorities to limit the maximum height of small wireless facilities to ten feet above the utility pole (or support structure) on which it is co-located. For new or replacement pole applications, the Act sets height limits of the higher of either 10 feet above the tallest existing utility pole in the same right of way within 300 feet (excepting any utility pole supporting only wireless facilities) or 45 feet above ground level. However, the Act also contemplates that wireless providers should be able to request exceptions or variances to these new pole height limits and that such exceptions or variances may not be prohibited.

Because your existing Right of Way Ordinance already includes an administrative variance process for other right of way matters, this draft proposes using the variation procedure in the Right of Way Ordinance to consider pole height requests. This is an administrative procedure that avoids the necessity for a public hearing for requests for height exceptions and allows you a chance to discuss possible changes and adjustments directly with an applicant so that you can negotiate reasonable accommodations and changes as conditions of any grant of variance. If you would like to discuss the possible advantages and disadvantages of putting this through the zoning process instead, please let us know.

Similarly, the Act permits municipalities to impose requirements related to the spacing requirements of ground-mounted equipment in the right of way and undergrounding, but it must be subject to some type of process for requesting exceptions or variances. The existing Right of Way Ordinance contains some very general language in both regards. If you prefer to impose the more detailed provisions, please let us know as this will require further modification of the ordinance.

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Public Safety Requirements: While the Act permits municipalities to deny applications if they would interfere with reserved public safety space on existing facilities in the right of way, to defend any claim that the space on a pole needs to be reserved, it may be necessary to demonstrate that there is a plan for such a future public safety use and that collocation of a facility cannot be reasonably accommodated on that pole. Therefore, if you have any concerns about future use of municipal facilities for public safety purposes, you should be sure you have a documented and reasonably defensible basis for asserting those concerns to applicants.

Application Fees: The Act establishes maximum application fee amounts that may be imposed, and this ordinance codifies those maximum fee amounts. The Act does not permit municipalities to collect any other administrative or professional costs associated with reviews of small cell applications.

Pole Licensing Fees and License Form: The Act also imposes a defined fee for licensing of municipal poles that may be charged to small cell users of municipal facilities. If applicants otherwise meet the requirements of this ordinance, you will be required to accept their requests to use your poles in your right of way to collocate small wireless facilities, but you will be permitted to charge an annual, recurring, non-discriminatory fee. The Act sets that fee at either \$200 per year or "the actual, direct, and reasonable costs related to the wireless provider's use of the space." We have used the default "\$200 per year" fee in this draft ordinance. Municipalities will also have to treat requests for collocation on your municipally-owned utility poles outside of the right of way in a non-discriminatory manner, but the rates are not defined by the new statute.

Pole Licensing Agreement: Because you will be required to permit most small cell applicants to use your utility poles, the IML also has created a Model Master Pole Attachment Agreement. While most of the rights and responsibilities of small cell providers using your poles already are contained in the Act and the ordinance, the Act permits you to require a license for use of your poles. It may be useful to use the model license to spell out individual conditions for each individual pole as appropriate under the Act. Please let us know if you need any assistance modifying or customizing this model agreement for your use.

Zoning Code Changes: By making small cell facilities permitted uses in public rights of way and in exclusively commercial and industrial districts, the Act effectively makes a change to your zoning code for these districts and preempts some of your zoning rules including some of those related to aerials, antennas and towers. However, because time is of the essence in passing this small cell ordinance and because state law pre-empts your zoning code in this regard in any event, our current recommendation is that you get this new ordinance passed first. The next time you consider a zoning matter and are holding a zoning hearing, we can review your zoning code together to determine if any further clean-up is warranted.

Model Application Form: The IML has prepared a sample permit application that you can use for small cell applicants. We had asked that they include certain certifications of compliance and a checklist of the material that applicants will need to submit with the application, and they have done so. We hope the application form will facilitate your processing of applications under the Act and the new ordinance. If you need any assistance customizing this Application Form, please let us know.

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Frequently Asked Questions: The IML has prepared an FAQ form that you may find useful to review in expectation of receipt of applications under this new ordinance.

Press Release: The IML has prepared a sample press release that you can use to let your community know that they may be seeing these facilities installed in their neighborhoods. If you need any assistance further customizing this release or have questions about its contents and potential modifications, please let us know.

I hope you will let me know if you have any questions about this proposed ordinance and accompanying documents from the IML or if you wish to discuss how any of its provisions will apply to you. Otherwise, if this ordinance meets with your approval, you should plan to have it adopted before the end of July.

Very sincerely yours,



Ruth A. Schlossberg

RAS:dg

cc: John C. Schmitt, President (via email: [johnschmitt@algonquin.org](mailto:johnschmitt@algonquin.org))  
Robert G. Mitchard II, Public Works (via email: [bobmitchard@algonquin.org](mailto:bobmitchard@algonquin.org))  
Kelly A. Cahill (via email)

Attachments: Draft Small Cell Facilities Ordinance  
Copy of IML Small Wireless Facilities FAQ Form  
Copy of the IML Model Press Release  
Copy of the IML Model Master Pole Attachment Agreement  
Copy of the IML Model Small Wireless Facilities Permit Application

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## **ORDINANCE NO. 2018 - O -**

### ***An Ordinance Repealing Ordinance No. 2017-O-12, Small Cell Antenna/Tower Siting Provisions, Repealing Chapter 5.19, Amending Chapter 39 and Providing for the Regulation of and Application for Small Wireless Facilities in Village Rights of Way***

WHEREAS, the Village of Algonquin (the “Village”), 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 Illinois General Assembly has recently enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act (the “Act”), which becomes effective on June 1, 2018; and

WHEREAS, the Village is authorized, under existing state and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems and other personal wireless telecommunication facility installations in the public right-of-way as long as it does not conflict with State and federal law; and

WHEREAS, the Act sets forth the requirements for the collocation of small wireless facilities by local authorities.

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 above and foregoing recitals are hereby incorporated and made a part of this Ordinance as if fully set forth herein.

SECTION 2: Section 5.19, Utilities in Right of Way, of the Algonquin Municipal Code is hereby repealed as well as any references to that section in the Algonquin Municipal Code.

SECTION 3: Section 39.04-D, Supplemental Application Requirements for Specific Types of Utilities, of the Algonquin Municipal Code shall be amended to add the following new subsection 6:

6. In the case of the installation of Small Cell Antenna/Towers on either new or existing poles or structures, the provision of Section 39.24 shall apply and, in the event of any conflict, those provisions shall control.

SECTION 4: Section 39.20, Maintenance and Emergency Maintenance, of the Algonquin Municipal Code shall be amended to add the following new paragraph D:

D. Gas Pipes: Any person or company maintaining any gas pipe in the Village shall keep such pipe free from leaks so that no injury shall be done thereby to any person or property.

SECTION 5: On April 18, 2017, the President and Board of Directors passed the Small Cell Antenna/Tower Siting Provisions Ordinance, which created Section 39.24 of the Algonquin Municipal Code. Said Ordinance is hereby repealed in its entirety and is replaced with the following new Section 39.24, Small Wireless Facilities:

## **39.24 SMALL WIRELESS FACILITIES**

### **A. Purpose and Scope.**

1. The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the Village's jurisdiction, or outside the rights-of-way on property zoned by the Village exclusively for commercial or industrial use, in a manner that is consistent with the Illinois Small Wireless Facilities Deployment Act (P.A. 100-0585).
2. Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.
3. Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the wireless provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

### **B. Definitions.** For the purposes of this Ordinance, the following terms shall have the following meanings:

Act – the Illinois Small Wireless Facilities Deployment Act (P.A. 100-0585), as may be subsequently amended.

Antenna – communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes – uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

Applicant – any person who submits an application and is a wireless provider.

Application – a request submitted by an applicant to the Village for a permit to collocate small wireless facilities, and a request that includes the installation of a

new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or collocation – to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service – cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

Communications service provider – a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC – the Federal Communications Commission of the United States.

Fee – a one-time charge.

Historic district or historic landmark – a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the Village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

Law – a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility – a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Municipal utility pole – a utility pole owned or operated by the Village in public rights-of-way.

Permit – a written authorization required by the Village to perform an action or initiate, continue, or complete a project.



Person – an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public safety agency – the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate – a recurring charge.

Right-of-way – the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include Village-owned aerial lines.

Small wireless facility – a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Utility pole – a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

Wireless facility – equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

Wireless infrastructure provider – any person authorized to provide telecommunications service in the State that builds or installs wireless

communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the Village.

Wireless provider – a wireless infrastructure provider or a wireless services provider.

Wireless services – any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider – a person who provides wireless services.

Wireless support structure – a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

C. Regulation of Small Wireless Facilities.

1. Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.
2. Permit Required. An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:
  - a. Application Requirements. A wireless provider shall provide the following information to the Village, together with the Village's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
    - (i) Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;

- (ii) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
- (iii) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
- (iv) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- (v) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- (vi) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
- (vii) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

b. Application Process. The Village shall process applications as follows:

- (i) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- (ii) An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved

if the Village fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

- (iii) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the Village fails to approve or deny the application within 120 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

- (iv) The Village shall deny an application which does not meet the requirements of this Ordinance.

If the Village determines that applicable codes, ordinances or regulations that concern public safety, or

the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The Village shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the Village denies an application.

The applicant may cure the deficiencies identified by the Village and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The Village shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the Village's review period.

The applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- (v) Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, provided by the Village for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the Village and the applicant shall enter

into a License Supplement of the Master Pole Attachment Agreement.

- c. Completeness of Application. Within 30 days after receiving an application, the Village shall determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. An application shall be deemed complete if the Village fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.

Processing deadlines are tolled from the time the Village sends the notice of incompleteness to the time the applicant provides the missing information.

- d. Tolling. The time period for applications may be further tolled by:
  - (i) An express written agreement by both the applicant and the Village; or
  - (ii) A local, State or federal disaster declaration or similar emergency that causes the delay.

- e. Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the Village shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the Village may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The Village may issue separate permits for each collocation that is approved in a consolidated application.

- f. Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable Village codes or any provision, condition or requirement contained in this Ordinance.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable Village code provisions or regulations in effect at the time of renewal.

- g. Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

3. Collocation Requirements and Conditions.

- a. Public Safety Space Reservation. The Village may reserve space on municipal utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village reasonably determines that the municipal utility pole cannot accommodate both uses.
- b. Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- c. No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

- d. The wireless provider shall not collocate small wireless facilities on Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the Village utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.



- e. The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
- f. The wireless provider shall comply with the following design standards and any variations from these design standards may only be granted pursuant to the variance provisions of this Chapter (Section 39.21):
  - (i) Screening. Whenever any equipment or appurtenances are to be installed at grade, screening must be installed to minimize the visibility of the facility and shall not be permitted to obstruct sight lines or to create other traffic or safety problems.
  - (ii) Color and Stealth. All wireless facilities subject to this section, including all related equipment and appurtenances, must be a color that blends with the surroundings of the pole, structure tower or infrastructure on which it is mounted. The color must be comprised of nonreflective materials which blend with the materials and colors of the surrounding area and structures. The Applicant shall use good faith efforts to employ reasonable stealth techniques to conceal the appearance of the wireless facilities. Any pole extensions shall not be metallic or wood and shall blend with the color of the pole upon which they are mounted.
  - (iii) Wiring and Cabling. Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the national electrical code and national electrical safety code adopted by the Village and in force at the time of the installation of the facility. Any wiring must be covered with an appropriate cover. No wiring and cabling serving the facility will be allowed to interfere with any existing uses.
- g. Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocation small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing

wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the Village, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- h. Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- (i) 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the Village, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the Village, provided the Village may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- (ii) 45 feet above ground level.

- i. Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in the manner provided in this Chapter (Section 39.21).
- j. Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a

contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

k. Ground-mounted Equipment Spacing. Subject to the variance provisions of this chapter (Section 39.21) and state law, the wireless provider shall comply with applicable spacing requirements of this chapter concerning the location of ground-mounted equipment located in the right-of-way.

l. Undergrounding Regulations. Subject to the variance provisions of this chapter (Section 39.21) and state law, the wireless provider shall comply with the provisions of this chapter concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval.

m. Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

4. Application Fees. Application fees are imposed as follows:

a. Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

b. Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.

- c. Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
  - d. The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
    - (i) routine maintenance;
    - (ii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least 10 days prior to the planned replacement and includes equipment type and model numbers for any of the replacement equipment; or
    - (iii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or
    - (iv) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
  - e. Wireless providers shall secure a permit from the Village to work within rights-of-way for activities that affect traffic patterns or require lane closures.
5. Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:
- a. property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
  - b. property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public

park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or

- c. property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, “public utility” has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

- 6. Pre-Existing Agreements. Existing agreements between the Village and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Village utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the Village’s utility poles pursuant to applications submitted to the Village before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees and terms that the Village makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the Village that it opts to

accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercises its option under this paragraph.

7. Annual Recurring Rate. A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the Village utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

8. Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

- D. Dispute Resolution. The Circuit Court of McHenry County shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

- E. Indemnification. A wireless provider shall indemnify and hold the Village harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Village improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.
- F. Insurance. The wireless provider shall carry, at the wireless provider's own cost and expense such insurance as is required by this Chapter 39 (Section 39.08).

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the Village. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village.

SECTION 6: Appendix B, Penalty, Salary, Bonds and Fees, of the Algonquin Municipal Code shall be amended to delete the "small cell antenna permit review fee."

SECTION 7: 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 8: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 9: 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:  
Nay:  
Absent:  
Abstain:

APPROVED:

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

(SEAL)  
ATTEST: \_\_\_\_\_  
Village Clerk Gerald S. Kautz

Passed: \_\_\_\_\_  
Approved: \_\_\_\_\_  
Published: \_\_\_\_\_

Prepared by:  
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**MODEL MASTER POLE ATTACHMENT AGREEMENT**

This Master Pole Attachment Agreement (Agreement) made this \_\_\_\_ day of \_\_\_\_\_, 2018, between the City of \_\_\_\_\_, with its principal offices located at \_\_\_\_\_, hereinafter designated LICENSOR and \_\_\_\_\_, with its principal offices at \_\_\_\_\_, hereinafter designated LICENSEE. LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WITNESSETH**

**WHEREAS**, LICENSOR is the owner, of certain utility poles, wireless support structures, and/or real property, which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission (FCC) to LICENSEE; and

**WHEREAS**, LICENSEE desires to install, maintain and operate small wireless facilities in and/or upon certain of LICENSOR's utility poles, wireless support structures and/or real property; and

**WHEREAS**, LICENSOR and LICENSEE acknowledge that any term used in this Agreement that is defined in Section 2 of the Small Wireless Facilities Deployment Ordinance (Ordinance No. \_\_\_\_\_, as now or hereafter amended) shall have the meaning provided therein; and

**WHEREAS**, LICENSOR and LICENSEE acknowledge that the terms of this Agreement are nondiscriminatory, competitively neutral and commercially reasonable.

**WHEREAS**, LICENSOR and LICENSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LICENSOR may wish to permit LICENSEE to install, maintain and operate small wireless facilities as hereinafter set forth; and

**WHEREAS**, the LICENSOR and LICENSEE intend to promote the expansion of communications services in a manner consistent with the Small Wireless Facilities Deployment Act, the Illinois Cable and Video Competition Act, the Illinois Telephone Company Act, the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1, *et. seq.* and Federal Communication Commission Regulations; and

**WHEREAS**, LICENSOR and LICENSEE acknowledge that they will enter into a License Supplement (Supplement), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to license; and

**WHEREAS**, the Parties acknowledge that different related entities may operate or conduct the business of LICENSEE in different geographic areas and as a result, each Supplement may be signed by LICENSEE affiliated entities as further described herein, as appropriate based upon the entity holding the FCC license in the subject geographic location.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

- 1) PREMISES. Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LICENSOR agrees to license to LICENSEE that certain space on or upon LICENSOR's utility poles, and/or wireless support structures as more fully described in each Supplement to be executed by the Parties hereinafter referred to as the "Premises", for the installation, operation, maintenance, repair and modification of small wireless facilities; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property (as defined below) and to and from the Premises for the purpose of installation, operation, maintenance, repair and modification of LICENSEE's small wireless facilities. The LICENSOR's utility poles, wireless support structures and other poles and towers are hereinafter referred to as "Pole" and the entirety of the LICENSOR's property is hereinafter referred to as "Property". In the event there are not sufficient electric and telephone, cable or fiber utility sources located at the Premises or on the Property, LICENSOR agrees to grant LICENSEE the right to install such utilities on, over and/or under the Property and to the Premises as necessary for LICENSEE to operate its communications facility, but only from duly authorized provider of such utilities, provided the location of such utilities shall be designated by LICENSOR.
- 2) PERMIT APPLICATION. For each small wireless facility, LICENSEE shall submit an application to LICENSOR for permit that includes:
  - a) Site specific structural integrity and, for LICENSOR'S utility pole or wireless support structure, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
  - b) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
  - c) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
  - d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
  - e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
  - f) Certification that the collocation complies with LICENSOR's Small Wireless Facilities Ordinance requirements, to the best of the applicant's knowledge.
  - g) The application fee due.
- 3) APPLICATION FEES. Application fees are subject to the following requirements:
  - a) LICENSEE shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

- b) LICENSEE shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- c) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section must be accompanied by the required application fee.
- d) LICENSOR shall not require an application, approval, or permit, or require any fees or other charges, from LICENSEE, for:
  - i) routine maintenance; or
  - ii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if LICENSEE notifies LICENSOR at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of this Agreement; or
  - iii) the installation, placement, maintenance, operation, or replacement of small wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes, provided this provision does not authorize such facilities to be suspended from municipal electric lines, if any.

LICENSEE shall secure a permit from LICENSOR to work within rights-of-way for activities that affect traffic patterns or require lane closures.

#### 4) REQUIREMENTS.

- a) LICENSEE's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications. LICENSEE shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. If a small wireless facility causes such interference, and LICENSEE has been given written notice of the interference by the public safety agency, LICENSEE, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The LICENSOR may terminate a permit for a small wireless facility based on such interference if LICENSEE is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.
- b) LICENSEE shall not install devices on the existing utility pole or wireless support structure that extend beyond 10 feet of the poles existing height.
- c) LICENSEE shall install pole mounted equipment at a minimum of 8 feet from the ground.
- d) LICENSEE shall be limited to one (1) cabinet or other ground mounted device for ground mounted installations.

- e) LICENSEE shall paint antennas, mounting hardware, and other devices to match or complement the structure upon which they are being mounted.
- f) LICENSEE shall install landscaping at the base of poles with respect to any ground equipment installed by LICENSEE on which devices are being installed as required by [INSERT SPECIFIC CODE PROVISION, as now or hereafter amended] of the LICENSOR.
- g) LICENSEE shall comply with all the terms and conditions of LICENSOR's [INSERT APPROPRIATE RIGHT-OF-WAY ORDINANCE, as now or hereafter amended] in regards to construction of utility facilities.
- h) LICENSEE shall comply with requirements that are imposed by a contract between the LICENSOR and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- i) LICENSEE shall comply with applicable spacing requirements in [INSERT APPLICABLE CODES/ORDINANCES, as now or hereafter amended] concerning the location of ground-mounted equipment located in the right-of-way. *(NOTE: the requirements must include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.)*
- j) LICENSEE shall comply with [INSERT CODE PROVISION, as now or hereafter amended] concerning undergrounding requirements or determinations from the municipal officer or employee in charge of municipal utilities, in any. *(NOTE the requirements must include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.)*
- k) LICENSEE shall comply with [INSERT CODE PROVISION, as now or hereafter amended] for construction and public safety in the rights-of-way, including, but not limited to, wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations; and shall comply with reasonable and nondiscriminatory requirements that are consistent with PA 100-0585 and adopted by LICENSOR regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities.
- l) LICENSEE shall not collocate small wireless facilities within the communication worker safety zone of the pole or the electric supply zone of the pole on LICENSOR utility poles that are part of an electric distribution or transmission system. However, the antenna and support equipment of the small wireless facility may be located in the communications space on the LICENSOR utility pole and on the top of the pole, if not otherwise unavailable, if LICENSEE complies with [INSERT APPLICABLE CODE, as now or hereafter amended] for work involving the top of the pole. For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.
- m) LICENSEE shall comply with the [INSERT APPLICABLE CODE, as now or hereafter amended] that concern public safety.
- n) LICENSEE shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this

Agreement. LICENSEE shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

- o) LICENSEE shall comply with [INSERT SPECIFIC DESIGN STANDARDS] for decorative utility poles, or stealth, concealment, and aesthetic requirements that are identified by LICENSOR in [INSERT SPECIFIC PROVISIONS, as now or hereafter amended] adopted by LICENSOR, LICENSOR's comprehensive plan dated \_\_\_\_\_, or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.
- p) LICENSOR requires the following design or concealment measures in a historic district or historic landmark:

[INSERT DESIGN AND CONCEALMENT STANDARDS]

Any such design or concealment measures, including restrictions on a specific category of poles, may not have the effect of prohibiting any LICENSEE's technology. Such design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility. This paragraph may not be construed to limit LICENSOR's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act of 1966, 54 U.S.C. Section 300101 *et seq.* and the regulations adopted to implement those laws.

5) APPLICATION PROCESS. LICENSOR shall process applications as follows:

- a) An application to collocate a small wireless facility on an existing utility pole, replacement of an existing utility pole or wireless support structure owned or controlled by LICENSOR shall be processed by LICENSOR and deemed approved if LICENSOR fails to approve or deny the application within 90 days. However, if LICENSEE intends to proceed with the permitted activity on a deemed approved basis, LICENSEE must notify LICENSOR in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application. The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by LICENSOR. The receipt of the deemed approved notice shall not preclude LICENSOR's denial of the permit request within the time limits as provided under Ordinance \_\_\_\_\_.
- b) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed and deemed approved if LICENSOR fails to approve or deny the application within 120 days. However, if LICENSEE applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant must notify LICENSOR in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application. The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by LICENSOR. The receipt of the deemed approved notice shall not preclude LICENSOR's denial of the permit request within the time limits as provided under Ordinance \_\_\_\_\_, as now or hereafter amended.

- c) LICENSOR shall approve an application unless the application does not meet the requirements of Ordinance \_\_\_\_\_, as now or hereafter amended.
  - d) If LICENSOR determines that applicable codes, local code provisions or regulations that concern public safety, or the Requirements of Ordinance \_\_\_\_\_ require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned on the replacement of the utility pole or wireless support structure at the cost of LICENSEE. LICENSOR must document the basis for a denial, including the specific code provisions or application conditions on which the denial was based, and send the documentation to LICENSEE on or before the day LICENSOR denies an application. LICENSEE may cure the deficiencies identified by LICENSOR and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. LICENSOR shall approve or deny the revised application within 30 days after LICENSEE resubmits the application or it is deemed approved. However, LICENSEE must notify LICENSOR in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application. Any subsequent review shall be limited to the deficiencies cited in the denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.
  - e) COMPLETENESS OF APPLICATION. Within 30 days after receiving an application, the LICENSOR shall determine whether the application is complete and notify the applicant. If an application is incomplete, the LICENSOR shall specifically identify the missing information. An application shall be deemed complete if the LICENSOR fails to provide notification to the applicant with 30 days after all documents, information and fees specifically enumerated in the LICENSOR's permit application form are submitted by the application to the LICENSOR. Processing deadlines are tolled from the time the LICENSOR sends the notice of incompleteness to the time the applicant provides the missing information.
  - f) TOLLING. The time period for applications may be further tolled by the express agreement in writing by both LICENSOR and LICENSEE; or a local, State or federal disaster declaration or similar emergency that causes the delay.
  - g) CONSOLIDATED APPLICATIONS. A LICENSEE seeking to collocate small wireless facilities within the jurisdiction of LICENSOR shall be allowed, at LICENSEE's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. If an application includes multiple small wireless facilities, LICENSOR may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. LICENSOR may issue separate permits for each collocation that is approved in a consolidated application.
- 6) COLLOCATION COMPLETION DEADLINE. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless LICENSOR and

LICENSEE agree to extend this period or a delay is caused by make-ready work for a LICENSOR utility pole or by the lack of commercial power or backhaul availability at the site, provided LICENSEE has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless LICENSOR grants an extension in writing to the LICENSEE.

- 7) DURATION OF PERMITS AND SUPPLEMENTS. The duration of a permit and the initial Supplement shall be for a period of (not less than 5 years), and the permit and Supplement shall be renewed for equivalent durations unless LICENSOR makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable codes or local code provisions or regulations in Ordinance No. \_\_\_\_\_, as now or hereafter amended. If P.A. 100-0585 is repealed as provided in Section 90 of the Act, renewals of permits shall be subject to the LICENSOR's code provisions or regulations in effect at the time of renewal.
- 8) EXTENSIONS. Each Supplement may be extended for additional five (5) year terms unless LICENSEE terminates it at the end of the then current term by giving LICENSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term. The initial term and all extensions under a Supplement shall be collectively referred to herein as the "Term". Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination.
- 9) RENTAL. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the initial term of each Supplement shall be for five (5) years and shall commence on the first day of the month following the day that LICENSEE commences installation of the equipment on the Premises (the "Commencement Date") at which time rental payments shall commence and be due at a total annual rental as set forth in the Supplement, to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to the LICENSOR in the Supplement (unless LESSOR otherwise designates another payee and provides notice to LICENSEE). LICENSOR and LICENSEE acknowledge and agree that the initial rental payment for each Supplement shall not actually be sent by LICENSEE until thirty (30) days after the Commencement Date. LICENSOR and LICENSEE agree that they shall acknowledge in writing the Commencement Date of each Supplement. Rental for the use of any poles pursuant to this Agreement, shall be an annual fee of \$200.00 per each wireless facility which LICENSEE attaches to LICENSOR's pole. Thereafter, rent will be due at each annual anniversary of the "Commencement Date" of the applicable Supplement. Upon agreement of the Parties, LICENSEE may pay rent by electronic funds transfer and in such event, LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.
- 10) ABANDONMENT. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and the LICENSEE must remove the small wireless facility within 90 days after receipt of written notice from LICENSOR notifying LICENSEE of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by LICENSOR to the LICENSEE at the last known address of LICENSEE. If the small wireless

facility is not removed within 90 days of such notice, LICENSOR may remove or cause the removal of such facility and charge said costs to the LICENSEE.

LICENSEE shall provide written notice to LICENSOR of any sale or transfer of small wireless facilities not less than 30 days prior to such transfer and said notice shall include the name and contact information of the new wireless provider.

- 11) CONDITION OF PREMISES. Where the Premises includes one or more Poles, LICENSOR covenants that it will keep the Poles in good repair as required by all federal, state, county and local laws. If the LICENSOR fails to make such repairs including maintenance within 60 days, of any notification to LICENSOR, the LICENSEE shall have the right to cease annual rental for the effected poles, but only if the poles are no longer capable of being used for the purpose originally contemplated in this Agreement or otherwise do not comply with existing law. If LICENSEE terminates, LICENSEE shall remove its small wireless facility. Termination of this Agreement shall be the LICENSEE's sole remedy.
- 12) MAKE READY TERMS. LICENSOR shall not require more make-ready work than required to meet applicable codes or industry standards. Make-ready work may include work needed to accommodate additional public safety communications needs that are identified in a documented and approved plan for the deployment of public safety equipment as specified and included in an existing or preliminary LICENSOR or public service agency plan. Fees for make-ready work, including any LICENSOR utility pole attachment, shall not exceed actual costs or the amount charged to communications service providers for similar work and shall not include any consultants' fees or expenses for LICENSOR utility poles that do not support aerial facilities used to provide communications services or electric service. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the LICENSOR at the LICENEE's sole cost and expense.
- 13) AERIAL FACILITIES. For LICENSOR utility poles that support aerial facilities used to provide communications services or electric services, LICENSEE shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations. LICENSOR shall follow a substantially similar process for such make-ready work except to the extent that the timing requirements are otherwise addressed in Ordinance No. \_\_\_\_\_, as now or hereafter amended. The good-faith estimate of the person owning or controlling LICENSOR's utility pole for any make-ready work necessary to enable the pole to support the requested collocation shall include LICENSOR utility pole replacement, if necessary. Make-ready work for utility poles that support aerial facilities used to provide communications services or electric services may include reasonable consultants' fees and expenses.
- 14) NO AERIAL FACILITIES. For LICENSOR utility poles that do not support aerial facilities used to provide communications services or electric services, LICENSOR shall provide a good-faith estimate for any make-ready work necessary to enable the LICENSOR utility pole to support the requested collocation, include pole replacement, if necessary, within 90 days after receipt of a complete application. Make-ready work, including any LICENSOR utility pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by LICENSEE at LICENSEE's sole cost and expense. Alternatively, if LICENSOR determines that applicable codes or public safety regulations require the LICENSOR's utility



pole to be replaced to support the requested collocation, LICENSOR may require LICENSEE to replace LICENSOR's utility pole at LICENSEE's sole cost and expense.

- 15) GENERAL RESTRICTIONS. In the event LICENSOR, in its reasonable discretion deems it necessary to remove, relocate or replace a Pole, LICENSOR shall notify LICENSEE at least one hundred eighty (180) days prior of the need to remove or relocate its small wireless facility. In such event, LICENSOR shall provide options for alternative locations for LICENSEE relocation of equipment which shall be in a mutually agreeable location ("Alternative Premises"). LICENSEE shall be solely responsible for all costs related to the relocation of its small wireless facility to the Alternative Premises. In the event that a suitable Alternative Premises cannot be identified, LICENSEE may terminate the applicable Supplement. In the event of an emergency, which for purposes of this Agreement shall be considered any imminent threat to health, safety and welfare of the public, LICENSOR must provide as much notice as reasonably practical under the circumstances. LICENSEE may terminate this Agreement by giving written notice to the other party specifying the date of termination, such notice to be given not less than one hundred eighty (180) days prior to the date specified therein.
- 16) ELECTRICAL. LICENSEE shall be permitted to connect its equipment to necessary electrical and telephone service, at LICENSEE's expense. LICENSEE shall attempt to coordinate with utility companies to provide separate service to LICENSEE's equipment for LICENSEE use. In the event that LICENSEE can obtain separate electrical service with a separate meter measuring usage, the LICENSEE shall pay the utility directly for its power consumption, if billed directly by the utility. In the event that separate electrical service is not possible or practical under the circumstances, LICENSEE may use existing service, at LICENSEE's expense, upon the reasonable approval of LICENSOR. In the event that LICENSEE uses existing utility service at an individual Premises, the Parties agree to either: (i) attempt to have a sub-meter installed, at LICENSEE's expense, which shall monitor LICENSEE's utility usage (with a reading and subsequent bill for usage delivered to LICENSEE by either the applicable utility company or LICENSOR); or (ii) provide for an additional fee in the applicable Supplement which shall cover LICENSEE's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Supplement.
- 17) TEMPORARY POWER. LICENSEE shall be permitted at any time during the Term of each Supplement, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LICENSOR. LICENSEE shall be permitted to connect the temporary power source to its equipment on the Premises in areas and manner approved by LICENSOR.
- 18) USE; GOVERNMENTAL APPROVALS. LICENSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating small wireless facilities and uses incidental thereto. LICENSEE shall have the right to replace, repair and modify equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, in conformance with the original Supplement. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon its obtaining after the execution date of each Supplement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or

Local authorities as well as a satisfactory building structural analysis which will permit LICENSEE use of the Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; and (iii) LICENSEE determines that such Governmental Approvals may not be obtained in a timely manner, LICENSEE shall have the right to terminate the applicable Supplement. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the notice provisions set forth in Paragraph 23 and shall be effective upon the mailing of such notice by LICENSEE, or upon such later date as designated by LICENSEE. All rentals paid to said termination date shall be retained by LICENSOR. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, the LICENSEE shall have no further obligations for the payment of rent to LICENSOR for the terminated Supplement. Notwithstanding anything to the contrary in this Paragraph, LICENSEE shall continue to be liable for all rental payments to the LICENSOR until all equipment is removed from the Property.

- 19) **INSURANCE.** LICENSEE shall carry, at LICENSEE's own cost and expense, the following insurance: (i) property insurance for its property's replacement cost against all risks; (ii) workers' compensation insurance, as required by law; or (iii) commercial general liability insurance with respect to its activities on LICENSOR improvements or rights-of-way to afford [Insert minimum protection limits consistent with requirements of other users of LICENSOR improvements or rights-of-way, including coverage for bodily injury and property damage. Example: LICENSEE agrees that at its own cost and expense, LICENSEE will maintain general liability insurance with limits not less than \$\_\_\_\_\_ for injury to or death of one or more persons in any one occurrence and \$\_\_\_\_\_ for damage or destruction to property in any one occurrence.) LICENSEE shall include LICENSOR as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of LICENSOR in a commercial general liability policy.]

LICENSEE may self-insure all or a portion of the insurance coverage and limit requirements required by LICENSOR. If LICENSEE self-insures it is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this Section. If LICENSEE elects to self-insure it shall provide to LICENSOR evidence sufficient to demonstrate LICENSEE'S financial ability to self-insure the insurance coverage and limits required by LICENSOR.

- 20) **INDEMNIFICATION.** LICENSEE shall indemnify and hold LICENSOR harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of LICENSOR's improvements or right-of-way associated with such improvements by LICENSEE or its employees, agents, or contractors arising out of the rights and privileges granted under this Agreement and PA 100-0585. LICENSEE has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of LICENSOR or its employees or agents. LICENSEE hereby further waives any claims that LICENSEE may have against the LICENSOR with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

- 21) REMOVAL AT END OF TERM. LICENSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of a Supplement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage not caused by LICENSEE excepted. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LICENSEE shall remain the personal property of LICENSEE and LICENSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LICENSEE to remain on the Premises after termination of the Supplement, LICENSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed.
- 22) RIGHTS UPON SALE. Should LICENSOR, at any time during the Term of any Supplement decide to sell or transfer all or any part of the Property such sale or grant of an easement or interest therein shall be under and subject to the Supplement and any such purchaser or transferee shall recognize LICENSEE's rights hereunder and under the terms of the Supplement.
- 23) NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

## LICENSOR:

Title  
City  
Address  
City, State Zip

## Copy to:

Retained Attorney/Corporation Counsel  
Address  
City, State Zip

## LICENSEE:

Name  
Company  
Address  
City, State Zip

## Copy to:

Name  
Company  
Address  
City, State Zip

Either Party may change the addressee and/or location for the giving of notice to it by providing a thirty (30) days' prior written notice to the other Party.

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

- 24) CASUALTY. In the event of damage by fire or other casualty to the Pole or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Pole or Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's use of the Premises is impaired.
- 25) DEFAULT. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have 30 days in which to cure any breach, provided the breaching Party shall have such extended period, not to exceed 90 days, as may be required beyond the 30 days if the breaching Party commences the cure within the 30-day period and thereafter continuously and diligently pursues to cure to completion. The non-breaching Party may maintain any action or affect any remedies for default against the breaching Party subsequent to the 30-day cure period, as potentially extended to 90 days based on circumstances.
- 26) REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting, other than by the specific terms of this Agreement, the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the applicable Supplement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state of Illinois. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.
- 27) APPLICABLE LAWS. During the Term, LICENSOR shall maintain the Property and the Pole in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, (collectively "Laws"). LICENSEE shall, in respect to the condition of the Premises and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE in the Premises. It shall be LICENSOR's obligation to comply with all Laws

relating to the Pole in general, without regard to specific use (including, without limitation, modifications required to enable LICENSEE to obtain all necessary building permits).

- 28) BOND. LICENSEE shall deposit with LICENSOR on one occasion prior to the commencement of the first Supplement a bond in a form reasonably acceptable to LICENSOR in the amount of \$10,000 per small wireless facility to guarantee the safe and efficient removal of any equipment from any Premises subject to this Agreement, which equipment remains more than 30 days after rental payment has ceased and Licensee has failed to remove the equipment. The funds may also be used to restore the premises to original condition, if LICENSEE fails to do so.
- 29) MISCELLANEOUS. This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state of Illinois.
- 30) EXECUTION IN COUNTERPARTS. This Agreement and any Supplements may be executed in multiple counterparts, including by counterpart facsimiles or scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.
- 31) AUTHORIZATION. LICENSEE certifies and warrants that it has the authority to enter into this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LICENSOR:**

\_\_\_\_\_, an Illinois Municipal Corporation

BY:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**LICENSEE:**

BY:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT "A"****LICENSE SUPPLEMENT**

This License Supplement (Supplement), is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between **the City/Village of** \_\_\_\_\_, whose principal place of business is \_\_\_\_\_ (LICENSOR), and \_\_\_\_\_, whose principal place of business is \_\_\_\_\_ (LICENSEE).

1. **Master License Agreement.** This Supplement is a Supplement as referenced in that certain Master License Agreement between the City/Village \_\_\_\_\_ and \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, (the Agreement). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement (note – Supplement should govern because there may be some site specific items that might have to be addressed at an individual location which might create a conflict with Agreement terms) shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Premises.** The Property owned by Licensor is located at \_\_\_\_\_. The Premises licensed by the LICENSOR to the LICENSEE hereunder is described on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date and the Term of this Supplement shall be as set forth in Paragraph 7 of the Agreement.
4. **Consideration.** Rent under this Supplement shall be \$200.00 per year, payable to LICENSOR at \_\_\_\_\_. Thereafter, rent will be due at each annual anniversary of the "Commencement Date" of this Supplement. LESSEE shall obtain electrical service and provide for a separate meter and billing from the applicable utility provider.
5. **Site Specific Terms.** (Include any site-specific terms)

**IN WITNESS WHEREOF**, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

**LICENSOR**

**City/Village of \_\_\_\_\_, an Illinois Municipal Corporation**

BY:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**LICENSEE**

BY:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



EXHIBIT 1

**Premises**

(see attached site plans)

**MUNICIPAL OFFICIALS SHOULD REVIEW THIS DOCUMENT WITH RETAINED LEGAL COUNSEL OR OTHER QUALIFIED ATTORNEY.**

## MODEL SMALL WIRELESS FACILITIES PERMIT APPLICATION

### APPLICANT INFORMATION

Applicant Name:		Date:
Applicant is a: <input type="checkbox"/> Carrier/Wireless Provider <input type="checkbox"/> Representative <input type="checkbox"/> Other:		
Company Name:		
Address:		
City:	State:	ZIP Code:
Phone:	Email:	

### PROPOSED SITE LOCATION

Property Address:		
City:	State:	ZIP Code:
Closest Intersection (Distance and Direction from):		

### EXISTING POLE/STRUCTURE INFORMATION

New Pole/Structure Construction? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Pole/Structure ID Number:	Height of Pole/Structure (feet):	Pole Color:
Existing Attachment(s) on Pole/Structure? ( <i>e.g.</i> , banners, light fixtures) Yes <input type="checkbox"/> No <input type="checkbox"/>		
Existing Structure Owner:		
Name of Structure Owner Representative:		
Address:		
City:	State:	ZIP Code:
Phone:	E-mail:	Fax:

### PROPERTY OWNER INFORMATION

In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation. Permission has been granted by property owner? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Name:		
Address:		
City:	State:	ZIP Code:
Phone:	Email:	

**APPLICATION REQUIREMENTS**

The following documents must be attached or included for the Application to be complete:

- ☐ Application fee(s)
- ☐ Site specific structural integrity, AND for a municipal utility pole ☐ Make-ready analysis prepared by a structural engineer
- ☐ The location where each proposed small wireless facility or utility pole would be installed
- ☐ Photographs of the proposed site location and its immediate surroundings
- ☐ Specifications and drawings prepared by a structural engineer for each proposed small wireless facility
- ☐ The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility
- ☐ A proposed schedule for the installation and completion of each small wireless facility, if approved
- ☐ Proof of permission granted by property owner, if existing pole not owned by the City

**ATTESTATION, ACKNOWLEDGMENT & SIGNATURE**

I attest to the best of my knowledge and belief, that the information stated in this application and in all supporting plans and documents is true and accurate. To the best of my knowledge, I certify that the proposed collocation complies with the terms of the "Collocation Requirements and Conditions" Section of [CITY/VILLAGE]'s Small Wireless Facility Deployment Ordinance.

Signature of Applicant:

Date:

Printed Name of Applicant:

Title:

**\*\*FOR ADMINISTRATIVE USE ONLY\*\***

Date Application was submitted:

Application is: ☐ Complete ☐ Incomplete

If incomplete, date the Applicant was notified:

Missing documents or information:

**MUNICIPAL OFFICIALS SHOULD REVIEW THIS DOCUMENT WITH RETAINED LEGAL COUNSEL OR OTHER QUALIFIED ATTORNEY.**



## Small Wireless Facilities

### Frequently Asked Questions (FAQs)

June 1, 2018

*Public Act 100-0585, the Small Wireless Facilities Deployment Act (the Act), previously known as Senate Bill 1451, specifies how local authorities may regulate the attachment of small wireless facilities. Following is a compilation of frequently asked questions that the Illinois Municipal League (IML) anticipates regarding this Act.*

#### **What is a small wireless facility?**

A small wireless facility, commonly known as a “small cell,” enables the transmission of data and wireless communications to and from a wireless device, such as a computer, cell phone or tablet. The Act states that these small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses and schools in Illinois.

#### **What does the Act do?**

The Act provides the regulations and process for permitting and deploying small wireless facilities throughout Illinois. It specifies how local authorities may regulate the attachment of small wireless facilities on municipal utility poles or other structures.

#### **What happens if our municipality does not adopt an ordinance or schedule of fees prior to two months after the effective date of the Act?**

In the absence of an ordinance or agreement that makes available to wireless providers the rates, fees and terms for the attachment of small wireless facilities on municipal utility poles, wireless providers may attach small wireless facilities and install utility poles on their own accord, provided they comply with the requirements of the Act.

#### **What do we do if we begin to receive applications to attach small wireless facilities on our municipal poles before we have adopted an ordinance or a fee schedule, pursuant to the Act?**

Section 15(i)(4) of the Act provides that municipalities have two months following the effective date of the Act to adopt ordinances or provide agreements consistent with the terms of the Act, and thereafter, the terms of the Act will control in the absence of an ordinance or agreement. Permit applications received prior to August 1, 2018, would be acknowledged as received on the earlier of the effective date of the ordinance adopted by the municipality or August 1, 2018.

#### **Our municipality has already adopted the IML Small Cell Antenna/Tower Right-of-Way Siting Ordinance and/or an ordinance establishing standards for the construction of facilities on rights-of-way. What do we do about those ordinances?**

The municipality should consider leaving the prior IML Small Cell Antenna/Tower Right-of-Way Siting Ordinance in effect to support any existing installations, and adopting the new Model Small Wireless Facilities Deployment Ordinance for permit applications received after adoption of the new Model Small Wireless Facilities Deployment Ordinance. As to the ordinance establishing standards for the construction of facilities on rights-of-way, municipal officials should thoroughly review the ordinance with retained legal counsel or other qualified attorney and amend as necessary to ensure compliance with the Act.



## **Small Wireless Facilities**

### **Frequently Asked Questions (FAQs)**

June 1, 2018

#### **Does the Act apply to requests for permits to locate on municipal property outside of the right-of-way?**

The Act only requires that requests to locate on municipal property outside of the right-of-way be granted in a competitively neutral and non-discriminatory manner. If your municipality does not presently allow telecommunications carriers access to municipal property outside of the right-of-way, it need not do so.

#### **If the community requires other right-of-way users to obtain separate permits for electric and cabling requirements for their use, are wireless providers subject to those separate permitting requirements?**

Yes.

#### **Where are the small wireless facilities permitted uses, pursuant to Section 15(c) of the Act?**

Small wireless facilities are permitted uses in the right-of-way, and on property zoned exclusively for commercial or industrial use. On other property, zoning provisions apply, as do the Federal Communications Commission shot clock timelines for permitting of telecommunications facilities.

#### **If another authority is running through the municipality, such as a county or state road/street, who has the jurisdiction to control or regulate the small wireless facilities in the right-of-way?**

The unit of government that controls the right-of-way has the jurisdiction to regulate the small wireless facilities in that right-of-way.

#### **Who can I contact if I have questions?**

If you have any further questions, please feel welcome to contact:

Amelia Finch | Assistant Counsel  
Illinois Municipal League  
217.525.1220 phone | 217.525.7438 fax  
afinch@iml.org

**MUNICIPAL OFFICIALS SHOULD REVIEW THIS DOCUMENT WITH RETAINED LEGAL COUNSEL OR OTHER QUALIFIED ATTORNEY.**



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

– M E M O R A N D U M –

DATE: Wednesday, June 20, 2018  
TO: Mr. Robert Mitchard, II  
FROM: Mr. Shawn M. Hurtig  
SUBJECT: *Letter of Recommendation – Construction Contract  
Gaslight Drive IMS (VoA16-07-07A)*

This memo is to advise you of the recommendation I have for the bids on the **Gaslight Drive Roadway Rehab (VoA16-07-07A)** project that the Village of Algonquin is proposing. This project was identified in the running of the Village Roadway Asset Management System known as IMS (Infrastructure Management System software). 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 6-12-18 @ 11AM, below is a summary.

<u>FIRM</u>	<u>READ</u>	<u>Calc. Total</u>	<u>SECURITY</u>	<u>CERT</u>	<u>REFER</u>	<u>NON-COLS</u>	<u>NON-CONF</u>
Arrow Road Construction	\$1,083,860.00	\$1,083,860.00	YES	YES	YES	YES	YES
Copenhaver Construction	\$1,112,112.20	\$1,112,112.20	YES	YES	YES	YES	YES
A-Lamp Construction	\$1,039,153.44	\$1,039,153.44	YES	YES	YES	YES	YES

Average Cost		\$1,078,375.21		
Full Bid Results Spread		\$72,958.76	7%	Max \$ to Min \$Difference
Difference Avg to Lo		-\$39,221.77	-4%	Reduction in \$ from Low to Avg
Difference Avg to Hi		\$33,736.99	3%	Increase in \$ from Avg to Hi
3 Low Total Bid Average		\$1,078,375.21		
3 Low Total Bid Spread		\$72,958.76	7%	3 Low Bid Spread
Engineers Estimate of Probable Cost		\$1,390,282.14	-22%	Increase in \$ from 3 Low bid to EEOC
Village Budgeted Amount		\$1,300,000.00	-17%	Increase in \$ from 3 Low bid to EEOC

### Analysis

Per the bid requirements all firms submitted a cost based on 65 line items. This project has a tight cost spread, as there is only a 7% cost difference from the max and min bids received. The 3 bids fell within \$73K of each other indicating competitive bidding.

### Budget Information:

This project has an engineers estimate of \$1,391,000.00, which is 22% higher than bids (if you remove the 10% contingency, it is down to 12%). This indicates that the contractors have a strong understanding of the work portrayed on the prcpu. This project is budgeted in the FY2018/19 in the Street Improvement fund (04900300-43370) in the amount of \$1,300,000.00. This indicates a 17% reduction in cost between budget and low bid.

### Recommendation

The Village has never contracted directly with A-Lamp, however we have worked with A-Lamp on the Highlands of Algonquin Roadway project as they were the concrete sub-contractor to Arrow Road. This project is considered to be average in complexity and A-Lamp has a long history of performing concrete work. It is for those reasons and the analysis conducted that I recommend A-Lamp Construction for award in the amount of \$1,039,153.44 for the subject project contract. Please confirm this recommendation so that I may prepare the award and contract.

### Projected Project Schedule (2016)

5/11 – Notice to Bidders **(Completed)**  
6/12 – Bid Opening **(Completed)**  
6/21 – Bid Recommendation for Committee of the Whole **(Pending)**  
6/26 – Committee of the Whole Approval **(Pending)**  
6/28 – Prepare Contract Signature Documents  
7/3 – Village Board Approval  
7/9– Awarded Contractors Contract & Insurance Due  
  
7/23 – Start of Construction  
9/28 – Completion of Construction

ITEM NO.	ITEM	UNITS	Total	1	1		2	2		3	3		Bid	Bid	EEOPC	Bid Average	Low Bid	EEOPC
	PHASE 1 DESIGN		Plan Qty	Unit Price	Total		Unit Price	Total		Unit Price	Total		Irregularities	Average \$	UP \$	vs EEOPC	vs EEOPC	Total
1	TREE REMOVAL (6 TO 15 UNITS DIAMETER)	UNIT	50	\$30.60	\$1,530.00		\$32.00	\$1,600.00		\$33.00	\$1,650.00			\$31.87	\$30.00	6%	2%	\$1,500.00
2	NITROGEN FERTILIZER NUTRIENT	POUND	68	\$3.06	\$208.08		\$1.00	\$68.00		\$1.00	\$68.00			\$1.69	\$2.50	-33%	-60%	\$170.00
3	POTASSIUM FERTILIZER NUTRIENT	POUND	68	\$3.06	\$208.08		\$1.00	\$68.00		\$1.00	\$68.00			\$1.69	\$2.50	-33%	-60%	\$170.00
4	TOPSOIL FURNISH AND PLACE, 6"	SQ YD	3,490	\$6.12	\$21,358.80		\$5.00	\$17,450.00		\$2.00	\$6,980.00			\$4.37	\$8.00	-45%	-75%	\$27,920.00
5	EROSION CONTROL BLANKET	SQ YD	3,490	\$5.10	\$17,799.00		\$2.00	\$6,980.00		\$1.00	\$3,490.00			\$2.70	\$3.00	-10%	-67%	\$10,470.00
6	INLET AND PIPE PROTECTION	EACH	14	\$188.70	\$2,641.80		\$70.00	\$980.00		\$15.00	\$210.00			\$91.23	\$250.00	-64%	-94%	\$3,500.00
7	STONE DUMPED RIPRAP. CLASS A5	SY YD	12	\$127.50	\$1,530.00		\$110.00	\$1,320.00		\$75.00	\$900.00			\$104.17	\$100.00	4%	-25%	\$1,200.00
8	BITUMINOUS MATERIALS (TACK COAT)	POUND	13,054	\$0.55	\$7,179.70		\$0.10	\$1,305.40		\$0.01	\$130.54			\$0.22	\$1.50	-85%	-99%	\$19,581.00
9	HOT-MIX ASPHALT SURFACE REMOVAL - BUTT JOINT	SQ YD	177	\$4.18	\$739.86		\$17.00	\$3,009.00		\$8.00	\$1,416.00			\$9.73	\$10.00	-3%	-58%	\$1,770.00
10	HOT-MIX ASPHALT BINDER COURSE, IL-19.0, N50	TON	2,527	\$57.00	\$144,039.00		\$71.00	\$179,417.00		\$69.00	\$174,363.00			\$65.67	\$75.00	-12%	-24%	\$189,525.00
11	HOT-MIX ASPHALT SURFACE COURSE, MIX "D", N50	TON	1,656	\$66.00	\$109,296.00		\$82.00	\$135,792.00		\$79.50	\$131,652.00			\$75.83	\$80.00	-5%	-18%	\$132,480.00
12	PORTLAND CEMENT CONCRETE SIDEWALK 4 INCH	SQ FT	585	\$8.15	\$4,767.75		\$8.00	\$4,680.00		\$6.50	\$3,802.50			\$7.55	\$5.00	51%	30%	\$2,925.00
13	DETECTABLE WARNINGS	SQ FT	77	\$43.35	\$3,337.95		\$26.00	\$2,002.00		\$25.00	\$1,925.00			\$31.45	\$35.00	-10%	-29%	\$2,695.00
14	HOT-MIX ASPHALT SURFACE REMOVAL, 2"	SQ YD	1,246	\$1.85	\$2,305.10		\$3.00	\$3,738.00		\$2.70	\$3,364.20			\$2.52	\$3.50	-28%	-47%	\$4,361.00
15	HOT-MIX ASPHALT SURFACE REMOVAL, 4"	SQ YD	18,052	\$2.25	\$40,617.00		\$4.00	\$72,208.00		\$3.65	\$65,889.80			\$3.30	\$5.00	-34%	-55%	\$90,260.00
16	COMBINATION CURB AND GUTTER REMOVAL	FOOT	160	\$6.48	\$1,036.80		\$8.00	\$1,280.00		\$6.00	\$960.00			\$6.83	\$8.00	-15%	-25%	\$1,280.00
17	SIDEWALK REMOVAL	SQ FT	585		\$0.00		\$0.00	\$0.00			\$0.00			\$0.00	\$0.01	-100%	-100%	\$5.85
18	PRECAST REINFORCED CONCRETE FLARED END SECTION 42"	EACH	1	\$5,100.00	\$5,100.00		\$2,500.00	\$2,500.00		\$4,300.00	\$4,300.00			\$3,966.67	\$1,500.00	164%	-94%	\$1,500.00
19	STORM SEWERS, CLASS A, TYPE 1 12"	FOOT	56	\$91.80	\$5,140.80		\$85.00	\$4,760.00		\$80.00	\$4,480.00			\$85.60	\$55.00	56%	-54%	\$3,080.00
20	STORM SEWER REMOVAL 42"	FOOT	10	\$25.50	\$255.00		\$100.00	\$1,000.00		\$1.00	\$10.00			\$42.17	\$40.00	5%	-98%	\$400.00
21	CONTROLLED LOW STRENGTH MATERIAL	CU YD	13	\$153.00	\$1,989.00		\$140.00	\$1,820.00		\$50.00	\$650.00			\$114.33	\$30.00	281%	67%	\$390.00
22	MANHOLES, TYPE A, 4'-DIAMETER	EACH	5	\$3,570.00	\$17,850.00		\$2,700.00	\$13,500.00		\$3,000.00	\$15,000.00			\$3,090.00	\$749.00	313%	104%	\$3,745.00
23	INLETS, TYPE A	EACH	2	\$1,530.00	\$3,060.00		\$1,100.00	\$2,200.00		\$1,700.00	\$3,400.00			\$1,443.33	\$750.00	92%	-66%	\$1,500.00
24	REMOVING INLETS	EACH	1	\$255.00	\$255.00		\$500.00	\$500.00		\$350.00	\$350.00			\$368.33	\$500.00	-26%	-49%	\$500.00
25	FILLING MANHOLES	EACH	2	\$255.00	\$510.00		\$150.00	\$300.00		\$400.00	\$800.00			\$268.33	\$800.00	-66%	-100%	\$1,600.00
26	SHORT TERM PAVEMENT MARKING	FOOT	1,242	\$1.09	\$1,353.78		\$2.00	\$2,484.00		\$0.10	\$124.20			\$1.06	\$1.00	6%	-90%	\$1,242.00
27	SHORT TERM PAVEMENT MARKING REMOVAL	FOOT	621	\$2.10	\$1,304.10		\$2.00	\$1,242.00		\$1.00	\$621.00			\$1.70	\$1.00	70%	0%	\$621.00
28	THERMOPLASTIC PAVEMENT MARKING - LINE 4"	FOOT	322	\$1.53	\$492.66		\$4.00	\$1,288.00		\$3.30	\$1,062.60			\$2.94	\$1.00	194%	104%	\$322.00
29	THERMOPLASTIC PAVEMENT MARKING - LINE 6"	FOOT	96	\$2.04	\$195.84		\$6.00	\$576.00		\$5.00	\$480.00			\$4.35	\$1.50	190%	172%	\$144.00
30	THERMOPLASTIC PAVEMENT MARKING - LINE 12"	FOOT	145	\$4.08	\$591.60		\$10.00	\$1,450.00		\$6.60	\$957.00			\$6.89	\$3.00	130%	120%	\$435.00
31	THERMOPLASTIC PAVEMENT MARKING - LINE 24"	FOOT	58	\$8.16	\$473.28		\$19.00	\$1,102.00		\$10.10	\$585.80			\$12.42	\$4.50	176%	124%	\$261.00
32	DOWNSPOUT ADJUSTMENT	EACH	3	\$765.00	\$2,295.00		\$600.00	\$1,800.00		\$1,200.00	\$3,600.00			\$855.00	\$500.00	71%	-49%	\$1,500.00
33	EXPLORATION TRENCH, SPECIAL	EACH	38	\$255.00	\$9,690.00		\$150.00	\$5,700.00		\$250.00	\$9,500.00			\$218.33	\$500.00	-56%	-97%	\$19,000.00



34	TEMPORARY ACCESS (PRIVATE ENTRANCE)	EACH	75	\$14.70	\$1,102.50		\$150.00	\$11,250.00	\$50.00	\$3,750.00	
35	TRAFFIC CONTROL AND PROTECTION, (SPECIAL)	LSUM	1	\$10,767.67	\$10,767.67		\$133,000.00	\$133,000.00	\$89,000.00	\$89,000.00	
36	HOT-MIX ASPHALT DRIVEWAY REMOVAL AND REPLACEMENT	SQ YD	785	\$37.90	\$29,751.50		\$29.00	\$22,765.00	\$40.00	\$31,400.00	
37	DUST CONTROL WATERING	UNIT	8	\$146.34	\$1,170.72		\$130.00	\$1,040.00	\$10.00	\$80.00	
38	PROPERTY MARKERS	EACH	1	\$1,020.00	\$1,020.00		\$1,500.00	\$1,500.00	\$2,000.00	\$2,000.00	
39	PORTLAND CEMENT CONCRETE SIDEWALK CURB	FOOT	60	\$51.00	\$3,060.00		\$31.00	\$1,860.00	\$50.00	\$3,000.00	
40	STORM SEWERS, TYPE 1, WATER MAIN QUALITY PIPE, 12"	FOOT	79	\$96.90	\$7,655.10		\$89.00	\$7,031.00	\$105.00	\$8,295.00	
41	STORM SEWERS, TYPE 2, WATER MAIN QUALITY PIPE, 12"	FOOT	72	\$102.00	\$7,344.00		\$94.00	\$6,768.00	\$115.00	\$8,280.00	
42	CHIMNEY REHABILITATION	EACH	24	\$1,004.70	\$24,112.80		\$350.00	\$8,400.00	\$650.00	\$15,600.00	
43	STRUCTURES TO BE ADJUSTED	EACH	2	\$663.00	\$1,326.00		\$700.00	\$1,400.00	\$325.00	\$650.00	
44	STRUCTURES TO BE RECONSTRUCTED	EACH	1	\$1,530.00	\$1,530.00		\$1,100.00	\$1,100.00	\$1,800.00	\$1,800.00	
45	STRUCTURES TO BE REPLACED	EACH	5	\$3,060.00	\$15,300.00		\$2,500.00	\$12,500.00	\$3,500.00	\$17,500.00	
46	STRUCTURES TO BE REHABILITATED	EACH	17	\$2,550.00	\$43,350.00		\$790.00	\$13,430.00	\$800.00	\$13,600.00	
47	FRAMES AND GRATES, OR LIDS	EACH	28	\$408.00	\$11,424.00		\$650.00	\$18,200.00	\$450.00	\$12,600.00	
48	CATCH BASINS, TYPE C	EACH	1	\$1,734.00	\$1,734.00		\$2,900.00	\$2,900.00	\$2,000.00	\$2,000.00	
49	CURB AND GUTTER REMOVAL AND REPLACEMEN	FOOT	5,147	\$33.46	\$172,218.62		\$28.00	\$144,116.00	\$25.00	\$128,675.00	
50	BASE STABILIZATION	SQ YD	18,083	\$4.83	\$87,340.89		\$4.60	\$83,181.80	\$4.60	\$83,181.80	
51	SAW AND SEAL	EACH	103	\$15.30	\$1,575.90		\$9.00	\$927.00	\$30.00	\$3,090.00	
52	PROPOSED TREES	EACH	19	\$357.00	\$6,783.00		\$650.00	\$12,350.00	\$600.00	\$11,400.00	
53	CEMENT	TON	704	\$136.68	\$96,222.72		\$138.00	\$97,152.00	\$143.00	\$100,672.00	
54	SEED	ACRE	0.75	\$1,530.00	\$1,147.50		\$6,000.00	\$4,500.00	\$3,500.00	\$2,625.00	
55	CURB BOX REMOVAL AND REPLACEMENT	EACH	18	\$1,530.00	\$27,540.00		\$500.00	\$9,000.00	\$500.00	\$9,000.00	
56	CURB STOP AND BOX REMOVAL AND REPLACEMENT	EACH	5	\$2,040.00	\$10,200.00		\$900.00	\$4,500.00	\$1,200.00	\$6,000.00	
57	STORM SEWER REMOVAL AND REPLACEMENT, 12"	FOOT	12	\$790.50	\$9,486.00		\$120.00	\$1,440.00	\$80.00	\$960.00	
58	STORM SEWER REMOVAL AND REPLACEMENT, 15"	FOOT	4	\$795.60	\$3,182.40		\$200.00	\$800.00	\$85.00	\$340.00	
59	STORM SEWER REMOVAL AND REPLACEMENT, 18"	FOOT	200	\$188.70	\$37,740.00		\$71.00	\$14,200.00	\$90.00	\$18,000.00	
60	STORM SEWER REMOVAL AND REPLACEMENT, 24"	FOOT	15	\$800.70	\$12,010.50		\$90.00	\$1,350.00	\$135.00	\$2,025.00	
61	STORM SEWER REMOVAL AND REPLACEMENT, 42"	FOOT	4	\$1,530.00	\$6,120.00		\$500.00	\$2,000.00	\$200.00	\$800.00	
62	SANITARY SEWER REMOVAL AND REPLACEMENT, 8"	FOOT	4	\$816.00	\$3,264.00		\$200.00	\$800.00	\$105.00	\$420.00	
63	SANITARY SEWER REMOVAL AND REPLACEMENT, 12"	FOOT	116	\$239.70	\$27,805.20		\$92.00	\$10,672.00	\$135.00	\$15,660.00	
64	INLET FILTER BASKETS	EACH	34	\$178.50	\$6,069.00		\$40.00	\$1,360.00	\$15.00	\$510.00	
65	SILTATION FENCE	FOOT	450	\$5.10	\$2,295.00		\$2.00	\$900.00	\$1.00	\$450.00	
66	BRICK DRIVEWAY REMOVING AND RESETTING	EACH	2	\$1,530.00	\$3,060.00		\$2,800.00	\$5,600.00	\$1,500.00	\$3,000.00	

\$71.57

\$77,589.22

\$35.63

\$95.45

\$1,506.67

\$44.00

\$96.97

\$103.67

\$668.23

\$562.67

\$1,476.67

\$3,020.00

\$1,380.00

\$502.67

\$2,211.33

\$28.82

\$4.68

\$18.10

\$535.67

\$139.23

\$3,676.67

\$843.33

\$1,380.00

\$330.17

\$360.20

\$116.57

\$341.90

\$743.33

\$373.67

\$155.57

\$77.83

\$2.70

\$1,943.33

\$400.00	-82%	-88%	\$30,000.00
\$60,000.00	29%	-100%	\$60,000.00
\$50.00	-29%	-42%	\$39,250.00
\$10.00	854%	0%	\$80.00
\$1,500.00	0%	-97%	\$1,500.00
\$30.00	47%	3%	\$1,800.00
\$80.00	21%	11%	\$6,320.00
\$80.00	30%	18%	\$5,760.00
\$1,000.00	-33%	-65%	\$24,000.00
\$1,000.00	-44%	-68%	\$2,000.00
\$2,000.00	-26%	-45%	\$2,000.00
\$7,000.00	-57%	-64%	\$35,000.00
\$1,000.00	38%	-59%	\$17,000.00
\$600.00	-16%	-25%	\$16,800.00
\$1,350.00	64%	-98%	\$1,350.00
\$30.00	-4%	-84%	\$154,410.00
\$5.00	-6%	-8%	\$90,415.00
\$15.00	21%	-40%	\$1,545.00
\$700.00	-23%	-80%	\$13,300.00
\$200.00	-30%	-31%	\$140,800.00
\$4,000.00	-8%	-62%	\$3,000.00
\$500.00	69%	0%	\$9,000.00
\$800.00	73%	-1%	\$4,000.00
\$100.00	230%	-20%	\$1,200.00
\$90.00	300%	-6%	\$360.00
\$200.00	-42%	-65%	\$40,000.00
\$120.00	185%	-25%	\$1,800.00
\$500.00	49%	-60%	\$2,000.00
\$250.00	49%	-58%	\$1,000.00
\$175.00	-11%	-47%	\$20,300.00
\$250.00	-69%	-98%	\$8,500.00
\$3.00	-10%	-67%	\$1,350.00
\$1,000.00	94%	50%	\$2,000.00

EEOPC  
10% Contig  
Total

\$1,263,892.85  
\$126,389.29  
\$1,390,282.14

Contractor # 1	Contractor # 2	Contractor # 3
\$1,083,860.00	\$1,112,112.20	\$1,039,153.44



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

**– M E M O R A N D U M –**

DATE: July 20, 2018

TO: Tim Schloneger, Village Manager

FROM: Michele Zimmerman, Assistant Public Works Director

SUBJECT: *Phase 1 Engineering Services – Woods Creek Reach 4*

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Attached you will find a copy of the agreement with Applied Ecological Services, Inc. for design services for Woods Creek Reach 4 in the amount of \$50,000.00.

This reach of Woods Creek is directly downstream from the creek restoration that was completed in 2017 as part of the Illinois Environmental Protection Agency 319 Water Quality Grant. It is also part of a larger initiative in the Village of Algonquin to restore our creeks to healthy functioning stormwater systems. Over the past 11 years, the Village has been concentrating on restoration in the Woods Creek Watershed. This project is surrounded by over 150 acres of native restoration projects undertaken by the Village.

Of the surrounding projects, Applied Ecological Services was responsible for designing and installing the Spella Fen Buffer Restoration, the Spella Detention Naturalization, the Spella Pollinator Project and the Spella Wetland Restoration. They also completed the engineering design for reach 2&3 of the Woods Creek restoration mentioned above. Their knowledge and experience with this area and the Woods Creek Watershed makes them a nice fit to perform the work on this project.

Funding for this work is budgeted in the Park Improvement Fund. Money in this fund is used for park improvements and upgrades as well as natural area maintenance and wetland/natural area projects.

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 design services for Woods Creek Reach 4 to Applied Ecological Services, Inc. for \$50,000.00.

## Consulting Proposal and Agreement

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### Project Information

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Project Name: Woods Creek Reach 4 Design & Permitting  
AES Project Number: 18-0573  
Branch: West Dundee, IL

June 19, 2018

Michele Zimmerman  
Assistant Director of Public Works  
Village of Algonquin  
110 Meyer Drive  
Algonquin, IL 60102

Re: Agreement and Authorization for Services by Applied Ecological Services, Inc. (AES) for Village of Algonquin, Illinois.

Dear Michele,

Thank you for the opportunity to provide this proposal for services related to Design Plans and Permitting for ecological restoration of Woods Creek Reach 4. For your review, we have enclosed our scope of work based on our understanding of your request for services.

We are confident you will find that AES provides exceptional expertise, service, and value, and we look forward to working with you on this project. Please call with any questions regarding this proposal and supporting documents.

Once reviewed and signed, please return this Agreement according to the instructions on the signature page.

Sincerely,



William W. Stoll  
120 West Main St.  
West Dundee, IL 60118  
Office: 847-844-9385  
Cell: 773-507-0983  
[bill@appliedeco.com](mailto:bill@appliedeco.com)

## I. SCOPE OF WORK

### Task 1. 1' Topographical Survey

AES will subcontract with CBBEL to complete a Topographic Survey of the approximately 1,500 linear feet of Woods Creek Reach 4 and adjacent riparian areas as outlined in the project boundary exhibit (right). The survey will be done specifically to inform the proposed restoration design for the stream and riparian areas.

- All data should be Georeferenced (NAD83 IL SP East Zone, Feet) drawing file compatible with AutoCad Civil 3D DWG format with surface model (contours and TIN) via 3D drawing elements or LandXML.
- Ground control and elevations shall be referenced to the nearest Village Survey Control Point.
- Ground shots shall be taken that are sufficient to generate 1-foot interval contours.
- The survey shall include ground shots along the stream centerline approximately every 15 feet.
- Ground shots shall be taken from the top of the stream banks to the edge of the project boundary.
- The survey shall field locate all marked underground utilities as well as all visible structures such as manholes, outfalls, bridges, headwalls, culverts, etc. The utility information shall include the location, rim elevation, and invert elevations/ directions for all accessible structures.
- The survey shall include cross sections of the stream taken every 50' feet as measured along the stream's centerline. Cross sections shall extend 50 feet beyond the top of each bank. Cross section measurements shall include bottom and top of banks, intermediate benches along the stream banks, wetted width, riffle structures and pools.



*Product:* 1' Topographical Survey

*Lump Sum Fee:* \$4,500

### Task 2. Base Map & Site Visit

AES will use 1' foot topographic data provided by CBBEL and display it on a color aerial photograph for use during a site visit. An AES Ecologist and Landscape Architect will meet onsite with the Village to discuss the proposed ecological restoration options along Woods Creek Reach 4 and adjacent riparian area. AES will also record detailed notes and take photos related to the existing condition and proposed options. This information will be used to develop the Design Plans. During the site visit, AES will also tag desirable trees to be preserved within the project limits. Tag #, species, diameter at breast height (dbh) and condition will be noted.

*Product:* Base Map, Site visit with client, notes, and photos

*Lump Sum Fee:* \$5,000

### **Task 3. Wetland Delineation & Report**

A wetland delineation will be required for future Corps permitting. AES Ecologists will conduct a wetland delineation along Woods Creek Reach 4. AES will conduct a wetland delineation in accordance with the U.S. Army Corps of Engineers (Corps) 1987 Wetland Delineation and the Midwest Regional Supplement for Wetland Delineations. Pink pin flags will be used to delineate the on-site wetland boundaries. Wetland delineation flags will be GPS'd by AES. As required by the Corps, the delineation shall include an on-site investigation of vegetation, soils, and hydrology. In addition, the floristic quality index (FQI) will be calculated for each wetland encountered. Digital photographs of data points will be taken to assist in documenting existing site conditions. Adjacent off-site wetlands will also be identified and inspected, if possible, but not flagged. Note: the Corps and County require that field data be collected during the growing season. AES can complete the wetland delineation outside the growing season if requested but may be required to return during the growing season to collect additional information. Time required to revisit the site and collect additional data will be billed on a time and materials basis.

AES will prepare a wetland delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and Midwest Regional Supplement. The report will include the following: a wetland delineation exhibit that shows all wetlands and data collection points within the project area, photos of representative data points locations, wetland and soils maps, U.S. Army Corps of Engineers data forms, and an evaluation of the quality of on-site wetlands based upon the Floristic Quality Index (FQI). The report will also include all additional County wetland delineation requirements, such as approximate location of adjacent off-site wetlands, calculation of buffer width and including buffers (if necessary), and wildlife evaluation forms for each wetland.

*Product:* Wetland Delineation Report

*Lump Sum Fee:* \$4,000

### **Task 4. Preliminary & 90% Design Plans**

An AES Ecologist and Landscape Architect will use site information to develop Preliminary & 90% Design Plans. AES will submit an electronic copy of both the Preliminary & 90% Design Plans to the Village for one review and comment. Written specifications will also be included in the Design Plans. In addition, AES will prepare an Opinion of Probable Cost for Construction for both the Preliminary and 90% Design. The Preliminary & 90% Design Plans will include:

1. Title Sheet with the project location map, general notes, and materials/quantities schedule;
2. Grading Plan Sheet showing existing and proposed topography contours, tree removal/protection, stream profile and cross sections;
3. Erosion & Sediment Control Sheet outlining erosion control measures and details;
4. Planting Plan Sheet with associated seed and plant plug lists and quantities. Planting details will also be shown on this sheet and any general planting notes.
5. Construction Details Sheet with typical cross sections, riffle details, planting details, etc.

\*Note: If budget allows, AES will take the 90% Design Plans to the Final Design Phase.

*Product:* Preliminary & 90% Design Plans

*Lump Sum Fee:* \$24,000

### **Task 5. Environmental Permitting**

AES will prepare a Corps/IEPA Joint Application for this project. AES understands that the IEPA Stormwater Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI), and McHenry/Kane County Stormwater Permits will be handled by the Village/Village Engineer. For the Corps/IEPA Joint Application permit, AES will submit the 90% Design Plans, wetland report (completed by others), obtain a jurisdictional determination, submit appropriate applications to the IDNR, USFWS, and SHPO as well as prepare the application package and coordinate with the Corps project manager. AES also anticipates meeting the Corps project manager on site (following the wetland delineation) to discuss the project details and respond to Corps' requests for additional information and/or revisions to the plan. AES will also complete the

MCSWCD permit application for soil erosion and sedimentation control and will coordinate requests for additional information and/or revisions to the plan. Note: client will be responsible for paying the MCSWCD permit fee.

*Product:* Permit Applications

*Lump Sum Fee:* \$5,000

#### **Task 6. IDNR-OWR Permitting**

AES will subcontract with CBBEL to complete required IDNR-OWR permitting related to floodplain/floodway issues. CBBEL will use AES's Preliminary Plan drawings and input data into existing hydrologic/hydrology models developed for upstream and downstream reaches of Woods Creek.

*Product:* IDNR-OWR Application

*Lump Sum Fee:* \$7,500

**Total Lump Sum Fee Tasks 1-6:                      \$50,000**

#### **Billing Information:**

Total amount of contract: **\$50,000**

Payment:

- ☐ Estimated Fees
- ☐ Estimated Fees, Not-to-Exceed (per fee schedule, with not-to-exceed amount)
- ☒ Lump Sum (% complete, by project total)
- ☐ Lump Sum by Task (% complete by task, no hourly detail)
- ☐ Time and Materials

**Special Billing Instructions:** Not Applicable

#### **Reimbursable Expenses:**

- ☒ Reimbursable expenses are included in the fee.
- ☐ Reimbursable expenses are not included in the fee and will be billed per the fee schedule.

Receipts Required:      ☐ Yes      ☒ No

Meals Charged:        ☐ Yes      ☒ No

Per Diems Charged:    ☐ Yes      ☒ No

Enclosure(s)

Standard Terms and Conditions

Exhibit A: AES Rate Schedule

Signature Page on Next Page

## Acceptance

In signing below, each party agrees to abide by all terms and conditions presented in this Agreement and the defined contents. Work will begin upon receipt of the applicable deposit and this signed authorization.

**\*\*PLEASE SIGN AND RETURN to Applied Ecological Services, Inc. An executed contract containing both signatures will be returned to you. This Agreement is not binding upon AES until executed by an officer of AES.**

Applied Ecological Services, Inc.

Signature:	Date:
Name:	
Title:	
P.O. Box 256, 17921 Smith Rd.	
Brodhead, WI 53520	
Phone: 608-897-8641	Fax: 608-897-8486
Email:	

Client:

Signature:	Date:
Name:	
Title:	
Company:	
Address:	
City, State, Zip:	
Phone:	Fax:
Email:	

Billing Address:

<input type="checkbox"/> Mark if same as above.	
Company:	
Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	Fax:
Email:	

## Notes:

1. This Agreement summarizes the information contained in the proposal and is necessary for acceptance of the contract. Along with the attached documents, including the Standard Terms and Conditions, this summary and signature page will define and govern the contract.
2. This Agreement may be executed in one or more counterparts (transmitted by facsimile or PDF electronic transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

# Standard Terms and Conditions

1. **Term and Termination.** These Terms and Conditions apply to the attached agreement and any subsequent agreements or changes to existing agreements for services between Applied Ecological Services, Inc. (hereafter AES) and the Client as defined in the agreement. Together these documents and any attachments constitute the Agreement.

1.1. **Termination.** Either party may terminate this Agreement, in whole or in part, at any time upon no less than fifteen (15) days written notice to the other party. In addition, AES shall have the right to suspend its provision of Services in the event Client defaults in timely payment for Services.

1.2. **Payment Upon Termination.** In the event of termination, all previous unpaid invoices submitted by AES to Client will be due and payable. AES will also be paid, under the terms of the Agreement, for any and all work performed and/or completed, and expenses incurred between the time period covered by the most recent invoice and the date of termination. Additionally, AES will be reimbursed on a time-and-expenses basis at AES' standard rates for all reasonable termination expenses including: the cost of completing analyses, records, and reports necessary to document job status at the time of termination; the cost to bring any site work to a safe and stable condition; and reasonable costs associated with untimely demobilization and reassignment of personnel and equipment.

1.3. **Transition Period.** In the event that this Agreement is terminated by either party, Client may require AES to continue any or all activities as described in the Agreement to allow for a reasonable transition period. This work would be conducted under the terms of this Agreement, which will remain in force until the transition period is completed.

## 2. **Invoicing and Payment.**

2.1. **Invoicing/Payment Term.** AES shall invoice Client for Services performed on a periodic basis, usually monthly. Upon receipt of an invoice from AES, Client shall have thirty (30) days from the date of the invoice to pay the amount due, or to notify AES in writing of a bona fide dispute asserted in good faith as to one or more of the invoiced items. Unless otherwise provided, all Services, equipment, and materials furnished by AES shall be at the rates specified in AES' Rate Schedule, attached hereto as **Exhibit A** and incorporated by reference herein. The AES Rate Schedule may be modified by AES by written notice to Client. Deposits paid according to the terms above will be applied to the final invoices under this Agreement.

2.2. **Taxes.** All charges are net of any applicable taxes (except income and payroll taxes). Any additional costs due to applicable taxes will be reimbursed by Client. Sales tax, if applicable, will be added upon invoicing.

2.3. **Currency.** All fees are stipulated in U.S. Dollars and must be paid to AES in U.S. Dollars.

2.4. **Method.** Payments to AES shall be made via Automated Clearing House (ACH) to AES' bank account using the information below. Please include invoice number(s) in remittance correspondence. If unable to make payments via ACH, checks made payable to "Applied Ecological Service, Inc." can be mailed to P.O. Box 256, Brodhead, WI 53520. Please indicate the AES invoice number(s) in check memo.

Bank Name: **The Bank of New Glarus/Sugar River Bank Branch**  
Bank Address: **2006 1<sup>st</sup> Center Ave, Brodhead, WI 53520**  
Routing Number: **075903912**  
Checking Account Number: **200142519**

2.5. **Prevailing Wages.** Unless specifically set forth in the applicable Letter Agreement, Client represents that prevailing wages are not required for any of AES' Services under this Agreement. However, should AES be required to pay prevailing wages, Client will pay AES the increased costs associated with the applicable prevailing wage rates, including any penalties, back wages, and administrative expenses.

3. **Liens.** AES reserves the right to place or file liens on the Client's property if payment for work or Services performed is not made in a timely fashion, subject to compliance with applicable laws. Advance notices of lien rights with respect to an applicable project may be provided as an attachment to this Agreement.

## 4. **Confidentiality.**

4.1. **Definition and Exceptions.** For purposes of this Agreement, information shall be considered confidential if it is of a type generally understood to be confidential, or if the disclosing party specifically notifies the recipient party in writing, whether by labeling materials reflecting such information as "CONFIDENTIAL" or otherwise unambiguously informing the recipient party (hereinafter, "Confidential Information"). Such Confidential Information includes, but is not limited to, research, product plans, products, services, customers, markets, ideas, concepts, discoveries, techniques, specifications, methodologies, models, flow charts, data, software, developments, inventions, processes, designs, drawings, marketing plans, sales information, and financial information, and any information that constitutes a trade secret under the



Uniform Trade Secrets Act or similar laws. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is already known to the recipient as shown by written records in its possession at the time such information is received; (ii) is already part of the public domain at the time of disclosure, or subsequently becomes part of the public domain through no fault of the recipient; (iii) is obtained on a non-confidential basis from a third party who lawfully disclosed the same to the recipient; or, (iv) is independently developed by an employee or consultant of the recipient who had no knowledge of or access to the information.

4.2. **Nondisclosure of Confidential Information.** During the term of this Agreement and for a period of three (3) years following termination, each party agrees to keep Confidential Information provided to such party by the other party in strict confidence and not to use any such Confidential Information other than in connection with the transactions contemplated by this Agreement, without the prior written consent of the other party. In addition, each party agrees not to misappropriate or threaten to misappropriate any trade secret information received, or any part thereof, for as long as such information remains a trade secret. Notwithstanding the foregoing, this Agreement shall not apply to the extent that information is subpoenaed or otherwise required by law to be disclosed by the recipient party, provided the recipient party shall use its best efforts to inform the disclosing party of any demand for such disclosure as soon as such demand is made, in order to allow the disclosing party the opportunity to seek protective relief.

4.3. **Use of Project Information.** Client agrees that AES may use Client's name and a general description of projects as a reference for other prospective clients, provided that no Confidential Information is disclosed.

## 5. **Ownership of Work Product.**

5.1. **Work Product.** All drawings, specifications and other documents and electronic data furnished by AES to Client under this Agreement ("Work Product") are deemed to be Instruments of Service, and AES shall retain the ownership and property interest therein, including the copyrights thereto.

5.2. **Client's Limited License.** Upon Client's payment in full for all work performed under this Agreement, AES shall grant Client a limited license to use the Work Product in connection with Client's occupancy or possession of the applicable project, and the drawings, specifications and other documents prepared by AES for the project may be retained by Client. Client may make changes, additions, and deletions to the applicable project design, in whole or in part, conditioned on Client's express understanding that such use of the Work Product is at Client's sole risk and without liability or legal exposure to AES.

5.3. **Use.** Any documents generated by AES are for the exclusive use of Client. Any use by third parties or use beyond the intended purpose of the document will be at the sole risk of Client unless otherwise agreed upon by AES in writing. If Client uses the design materials on any project other than the Project for which it was developed (a "Subsequent Use"), Client agrees that it shall do so at its sole risk and without liability or legal exposure to AES. Client further agrees that it shall defend, indemnify and hold harmless AES from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorney's fees, arising out of or resulting from such Subsequent Use.

## 6. **Insurance.**

6.1. **Coverage.** At all times during the term of this Agreement, AES shall, at its own expense, maintain insurance coverage of the kind and in the minimum amounts listed in **Exhibit B**.

6.2. **Waiver of Subrogation.** To the extent possible, any of the parties' insurance policies provided under the provisions of this Agreement, or which may be used in relation to this Agreement, shall contain waivers of subrogation in favor of the other party, by endorsement or otherwise, it being the intent of the parties that the insurance policies shall protect both parties. The parties release each other from liability covered by the insurance for which subrogation is waived.

6.3. **Additional Coverage.** Upon advance written notice, AES shall provide additional amounts or kinds of insurance as may reasonably be deemed necessary by Client in connection with the ongoing nature of operations and changes in exposure, but only to the extent the insurance is commercially available, and provided Client pays the cost of said coverage.

6.4. **Notice of Cancellation.** The above-required insurance shall be maintained by AES during the term of this Agreement, and shall not be canceled, altered, or amended by AES without thirty (30) days advance written notice to Client.

7. **Limitation of Liability.** With respect to any claim covered pursuant to the terms and conditions of AES' liability insurance policies carried pursuant to this Agreement, Client agrees that AES' total liability for acts, omissions, or damages, shall not exceed the available limits of coverage as set forth in such insurance policies.

Notwithstanding any other term of this Agreement to the contrary, in no event shall AES, (or its employees, agents, successors, or assigns) be liable to Client or any third party claiming through Client for indirect, special, incidental, consequential, exemplary, or punitive damages of any nature (including damages for loss of revenue, profits, business interruption, loss of business information, loss of capital, loss of technology, loss of data, increased costs of operation, litigation costs and the like) whether based upon a claim or action in contract, tort (including negligence),

or any other legal or equitable theory, in connection with the supply, use or performance of the Services provided by AES to Client, regardless of whether AES has been advised of the possibility of such damages or such damages were reasonable foreseeable.

#### **8. Indemnification.**

8.1. AES' Indemnification of Client. To the fullest extent permitted by law, AES shall indemnify and hold harmless the Client, its officers, directors, employees or agents, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work on a project subject to this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) but only to the extent caused by the negligent acts or omissions of AES, its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused by a party indemnified hereunder.

8.2. Client's Indemnification of AES. To the fullest extent permitted by law, Client shall indemnify and hold harmless AES, its officers, directors, employees or agents, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of work on a project subject to this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of Client, its subcontractors (other than AES), anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused by a party indemnified hereunder.

9. Independent Entities. Client and AES are independent entities, and nothing in this Agreement or otherwise shall be deemed or construed to create any other relationship, including one of employment, joint venture, or agency.

#### **10. Dispute Resolution.**

10.1. Direct Discussion. If a dispute arises out of or relates to this Agreement or its breach, the parties shall use good faith efforts to settle the dispute through direct negotiation.

10.2. Project Status During Dispute. If the dispute does not result in the termination of the Agreement, AES shall continue providing Services during all dispute resolution proceedings. Client shall continue to make payments in accordance with this Agreement, except with respect to amounts in dispute in accordance with Section 2.

10.3. Mediation. If the dispute cannot be settled through direct negotiation, except with respect to a matter involving payment of an invoice, the parties shall engage in mediation prior to entering into litigation, and shall endeavor to resolve the dispute through the involvement of a neutral mediator. The Construction Industry Mediation Rules of the American Arbitration Association shall govern this process unless otherwise agreed. The costs of any mediation proceeding shall be shared equally by the parties. No legal action will be filed until mediation has concluded.

#### **11. Standard of Care / Warranties.**

11.1. Standard of Care. All Services provided by AES shall be performed by appropriately qualified personnel, properly licensed whenever required, and shall meet all standards of industry skill, care and judgment ordinarily expected in the locality where the Services are provided.

11.2. Warranties. Construction work performed by AES includes a one (1) year warranty on materials and workmanship. AES warrants that such work shall be free from material defects not intrinsic in the design or material required in the Agreement, if any. AES' warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the project was not intended, improper or insufficient maintenance, modifications performed by the owner or others, or abuse. AES warrants that all materials shall be new unless otherwise specified, of good quality, in conformance with the Agreement, if any, and free from defective workmanship. If within one year the Client does not promptly notify AES of defective work, the Client waives AES' obligation to correct any defective work as well as the Client's right to claim a breach of warranty with respect to that defective work. If any of the Services are eliminated, or if AES is not retained to perform subsequent phases, AES' responsibility will extend only to the Services it completes.

#### **12. Time for Performance.**

12.1. AES' Services will be performed according to the schedule specified in the Letter Agreement or related Attachments approved by Client and AES and incorporated into this Agreement.

12.2. If the Services to be performed by AES are interrupted, disrupted, suspended, or delayed for any reason beyond the reasonable control of AES, the schedule of work and the date for completion will be adjusted accordingly. AES will be compensated for all reasonable increased costs resulting from such interruption, disruption, suspension, or delay.

### 13. Miscellaneous.

13.1. Entire Agreement. This Agreement and any Attachments which are or may be made a part thereof, constitute the entire agreement between the parties regarding the subject matter thereof, and all agreements, representations, promises, inducements, statements and understandings, made prior to or contemporaneous with this Agreement, written or oral, are superseded by this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of the parties hereto. No other act, document, usage or custom shall be deemed to modify this Agreement.

13.2. Governing Law and Jurisdiction. This Agreement shall be deemed to be an Agreement made under the laws of the State of Wisconsin, and for all purposes it, plus any related or supplemental exhibits, schedules, documents, or notices, shall be construed in accordance with and governed by the laws of such state. Both parties agree that the federal and state courts located in Wisconsin are an appropriate venue for any dispute between the parties, and both parties hereby submit to the jurisdiction of such courts. **CLIENT AND AES WAIVE ANY RIGHT TO A JURY TRIAL REGARDING ANY DISPUTE BETWEEN THE PARTIES.**

13.3. Construction / Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing the instrument to be drafted. The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any section or provision hereof.

13.4. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, if either party is prevented from performing any of its obligations hereunder by laws, orders, regulations or directions of any government having jurisdiction over the parties hereto, or any department, agency, corporation or court thereof, or by war, act of public enemies, strikes or other labor disturbances, fires, floods, acts of God, or any causes of like or different kind beyond the reasonable control of either party, then such party shall be excused from any failure to perform any such obligation to the extent such failure is caused by any such law, order, regulation, direction or contingency.

13.5. Severability. Each provision contained herein is severable from the Agreement and if one or more provisions are declared invalid, the remaining provisions shall nevertheless remain in full force and effect.

13.6. Notices. All notices pursuant to this Agreement shall be in writing and shall be given by certified mail or personal delivery (including overnight mail by private carrier) to the address set forth on the signature page to this Agreement, or to such other address as may be subsequently provided by written notice given in accordance with this section. Such notices shall be deemed given when delivered (including by overnight mail by private carrier) or, if by mail, effective when deposited in the U.S. Mail certified with return receipt requested, postage prepaid.

13.7. Attorneys' Fees. In the event either party shall be the prevailing party in any suit for damages for breach of this Agreement, including nonpayment of invoices, or to enforce this Agreement, or to enjoin the other party from violating this Agreement, such party shall be entitled to recover as part of its damages its reasonable legal costs and related expenses, including attorneys' fees, in connection with bringing and maintaining any such action.

13.8. Successors and Assignees. This Agreement will be binding on AES and Client, and their successors, trustees, legal representatives, and assigns. Neither party may assign or transfer any rights, responsibilities, or interest in this Agreement without the written consent of the other party and any attempt to do so without such consent may be void, provided, however, in the case of an assignment by AES to an affiliate controlled by or under the common control of AES, Client's consent will not be unreasonably withheld. Nothing in this section will prevent AES from employing subcontractors or subconsultants to assist in the performance of Services under this Agreement.

13.9. Waiver. The failure of either party in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement, or the waiver by either party of any breach of the terms or conditions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

13.10. Survival. All obligations of Client regarding amounts owed to AES and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.

13.11. Exhibits and Attachments. All Exhibits and Attachments are incorporated and made part of this Agreement for all purposes.

13.12. Counterparts / Signatures. This Agreement may be executed in one or more counterparts (transmitted by facsimile or PDF electronic transmission), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## EXHIBIT A

### RATE SCHEDULE

PROFESSIONAL TITLE	RATE
Principal Ecologist	\$ 190.00 - 250.00/hour
Principal Ecotoxicologist	\$ 130.00 - 185.00/hour
Principal Environmental Engineer	\$ 130.00 – 180.00/hour
Senior Communications Consultant	\$ 170.00/hour
Senior Ecologist	\$ 110.00 - 160.00/hour
Senior Engineer	\$ 110.00 – 160.00/hours
Senior Geologist	\$ 180.00 – 200.00/hour
Senior Hydrologist	\$ 100.00 – 150.00/hour
Senior Landscape Architect/Planner	\$ 100.00 - 180.00/hour
Landscape Architect	\$ 90.00 – 120.00/hour
Staff Cartographer/GIS analyst	\$ 80.00 – 120.00/hour
Staff Ecologist	\$ 80.00 – 120.00/hour
Staff Engineer	\$ 100.00 - 150.00/hour
Staff Biologist	\$ 80.00 – 120.00/hour
Staff Ecological/Landscape Designer	\$ 80.00 – 120.00/hour
Associate Ecologist	\$ 85.00/hour
Associate Ecological/Landscape Designer	\$ 75.00/hour
CADD/GIS Draftsperson	\$ 70.00 - 95.00/hour
Technical Assistant	\$ 60.00/hour
Clerical	\$ 60.00/hour
<b>OTHER SERVICES</b>	
Construction Oversight	\$ 80.00-120.00/hour
Technical Writing	\$ 100.00/hour
Automated Data Compliance/Processing	\$ 35.00/hour
<b>EXPENSES</b>	
Transportation mileage	\$ 0.60/mile
Per Diem	\$ 50.00/person/day
Computer Plotting – Black and White	\$ 1.50/square foot
Computer Plotting - Color	\$ 3.00/square foot
Black and White Copies and Prints	\$ 0.10/page
Color Copies and Prints	\$ 0.25/page
11 x 17 prints – color	\$ 2.00/sheet
CD burning	\$ 1.00 each
DVD burning	\$ 5.00 each
Scanning – small document	\$ 0.10/page
Scanning – large document	\$ 3.50/square foot
GPS Equipment	\$ 200.00/day
Computer Processing	\$ 35.00/hour
Corporate Plane Air Fare	\$ 2.85/mile
Any additional services	Cost plus 15%

\*Time spent providing testimony for legal proceedings will be billed at double normal hourly rate. Effective Jan 1, 2013