

AGENDA  
COMMITTEE OF THE WHOLE  
October 9, 2018  
2200 Harnish Drive  
Village Board Room  
- AGENDA -  
7:30 P.M.

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

1. **Roll Call – Establish Quorum**
2. **Public Comment – Audience Participation** (*Persons wishing to address the Committee on an item on this agenda must register with the Chair prior to roll call.*)
3. **Community Development**
  - A. Consider a Special Event Permit for the Lion’s Club Christmas Tree Sales
  - B. Consider Business Development Agreement with Rosen Hyundai Enterprises, LLC
4. **General Administration**
  - A. Consider a Three Year License and Maintenance Agreement with Azteca Systems for Cityworks Asset Management Software
  - B. Consider an Ordinance Amending Chapter 33, Liquor Control and Liquor Licensing, Amending the Number Available Liquor Licenses (Class A-3 and Class F)
5. **Public Works & Safety**
  - A. Consider an Agreement with Applied Ecological Services for the Phase 2 Design Services for Ratt Creek Reach 5 Restoration project
  - B. Consider Agreement with V3 Companies for Inspectional Services for Creeks Crossing Park & Drainage Improvement project
6. **Executive Session**
7. **Other Business**
8. **Adjournment**



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

**– M E M O R A N D U M –**

DATE: October 4, 2018

TO: Committee of the Whole

FROM: Russell Farnum, AICP, Community Development Director

SUBJECT: *Seasonal Event Permit – Lions Club Christmas Tree Sales 2018*

---

The Algonquin Lions Club has again petitioned for their annual Seasonal Event Permit to hold Christmas Tree Sales at the Algonquin State Bank lot at the corner of Huntington and Randall Road.

The Lions Club is requesting that the fee be waived, as they are a not-for-profit organization. The fee is \$50 per day and, if charged, would be over \$1,500.00.

The Village Board has traditionally granted their fee waiver request.

In addition, the past couple of years they have added fires in “burn barrels” for the warmth of their volunteers and the ambience of the holiday season. Staff has closely monitored this with the input from the Fire Department. We recommend approval of the fires subject to the following conditions:

1. Burn only natural dry seasoned wood, no tree scraps or greenery;
2. Keep fires and barrels at least six feet away from all combustibles;
3. At least one fire extinguisher must be present at all times;
4. All fires are subject to the approval of the Fire Chief;
5. The Village or the Fire Department may order the fires extinguished if the fires become unsafe or if there are complaints about smoke or odors.

It is recommended that the Committee of the Whole forward this request to the Village Board for approval with the considerations outlined above.

SPECIAL EVENT PERMIT NUMBER: \_\_\_\_\_

APPLICATION: \_\_\_\_\_

**VILLAGE OF ALGONQUIN  
COMMUNITY DEVELOPMENT DEPARTMENT  
SEASONAL/SPECIAL EVENT PERMIT APPLICATION**

RECEIVED  
OCT 01 2018  
COMMUNITY  
DEVELOPMENT

Application is hereby made for a permit to conduct a Seasonal/Special Event

Location of Event Algonquin State Bank - 2400 N. Huntington Drive

Name of Applicant Lions Club of Algonquin c/o Bob Commins Phone [REDACTED]

Address 2040 Brindlewood Ln., Algonquin, IL 60102

PROPERTY OWNER'S SIGNATURE OF PERMISSION: [Signature] SVR  
(required)

Attach or indicate below site plan, a time schedule for set-up and clean up, a time schedule for the actual event, parking & lighting plan, and please indicate ingress, egress, and traffic control, and indicate any tent location(s) and fencing.

Annual Algonquin Lions Club Christmas tree sales.  
November 17, 2018 set-up, with sales to begin November 23<sup>rd</sup>  
through December 22<sup>nd</sup>. Clean up will follow after  
Christmas.

The undersigned certifies that the statements in this application are true and correct and that all work done under the proposed permit will conform to the requirements of the Village of Algonquin Zoning Ordinance and all other Village Ordinances.

Tent Erector N/A Phone \_\_\_\_\_

Address \_\_\_\_\_

No error or omission in either plans or application, whether said plans or application has been approved by the Community Development or not, shall permit or relieve the applicant from conducting this event in any other manner that provided for in all the ordinances of the Village of Algonquin relating thereto. The applicant having prepared and read this application and fully understanding the intent thereof declares that the statements made are true to the best of his/her ability, knowledge and belief. No refund of permit fees shall be issued.

[Signature] Algonquin Lions Club  
Signature of Applicant

Mention PERMIT NUMBER AND ADDRESS when requesting inspection. Phone 847-658-2700 (Option 3) Fax 847-658-2631

SEASONAL EVENT FEE \_\_\_\_\_

ELECTRIC FEE \_\_\_\_\_

TOTAL PERMIT FEE \_\_\_\_\_

DATE ISSUED \_\_\_\_\_

TEMPORARY PERMIT EXPIRES ON \_\_\_\_\_

Building Commissioner



**Algonquin Lions Club  
P.O. Box 7493, Algonquin, IL 60102**

September 19, 2018

Mr. Tim Schloneger  
Village of Algonquin  
2200 Harnish Drive  
Algonquin, IL 60102

Dear Mr. Schloneger,

As an Algonquin based non-profit organization, we are conducting our annual fundraiser Christmas Tree Sale. It will be conducted as usual on the Algonquin State Bank property at 2400 Huntington Drive, between November 17 and December 22<sup>nd</sup>, 2018, with set-up/clean-up before and after. We have permission from the Algonquin State Bank, and will provide Lions insurance with the Bank and the Village as additional insured. (Certificate of Insurance attached)

We are requesting a waiver of appropriate fees for this project, which have been granted in the past.

If there is further information that you require, please contact me [REDACTED]  
[REDACTED]

Thank you for your assistance in this matter.

Regards,

A handwritten signature in cursive script, appearing to read 'Bob Cummins', followed by a horizontal line.

Bob Cummins  
Chairman, Algonquin Lions Club Christmas Tree Committee





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/20/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  DSP Insurance 1900 E. Golf Road, Suite 650 Schaumburg, IL 60173	<b>CONTACT NAME:</b> John Adams	<b>PHONE (A/C, No, Ext):</b> 1-800-316-6705	<b>FAX (A/C, No):</b> 847-934-6186
	<b>E-MAIL ADDRESS:</b> lionsclubs@dspins.com		
<b>INSURED</b>  Lions Club of Algonquin Algonquin Illinois	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: ACE American Insurance Company		22667
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Agg. Per Named Insured is \$2,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			HDOG71094972	09/01/2018	09/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			ISAH25159226	09/01/2018	09/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Provisions of the policy apply to the named insureds participation in the following activity during the policy period shown above: Algonquin Lions Club Annual Christmas Tree Sale, November 17, 2018 set up with sales to begin November 23 and continue to December 22 with clean up after Christmas

The following persons or organizations granting use of real property, including structures thereon are included as Additional Insured(s), but only with respect to General Liability arising out of the use of premises by the insured shown above and not out of the sole negligence of said additional insured.

Village of Algonquin

PROVISIONS OF THE POLICY DO NOT APPLY TO THE SALE OR SERVING OF ALCOHOLIC BEVERAGES

**CERTIFICATE HOLDER****CANCELLATION**

Algonquin State Bank  
2400 Huntington Drive  
Algonquin Illinois 60102

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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

**– M E M O R A N D U M –**

DATE: October 4, 2018

TO: Committee of the Whole

FROM: Russell Farnum, AICP, Community Development Director

SUBJECT: *Proposed Development Agreement, Rosen Hyundai Enterprises*

---

Rosen Hyundai has an opportunity to add another full line new car dealership at its existing facilities on Randall Road. Hyundai is spinning off its Genesis line into a separate, higher end automobile dealership (similar to Ford's "Lincoln" or Honda's "Acura" dealerships).

In order to obtain a Genesis dealership, Rosen will need meet a very particular set of standards set forth by Genesis, including a showroom, service garage, and vehicle display area that are unique to Genesis and separate from both the Hyundai dealership and the used car sales. In the short term, the existing Equus/Genesis showroom may be used, but additional building area and vehicle sales lots will need to be added, with buildings and site layout reconfigured in the future. Those requirements are still being formulated by Genesis, so those details and the planned physical changes to the buildings and site cannot be determined at this time.

Genesis currently offers a G80 and G90, both large luxury vehicles that compete with Mercedes and BMW. In 2019 Genesis is releasing the G70, a competitor to the BMW 3-series, and in 2020 Genesis is releasing two high-end SUV models. Except for the G70, which will start at about \$32,000, all of the models will sell for over \$50,000.

In order to bring this additional vehicle line to the Village, Rosen Hyundai has asked for a sales-tax sharing agreement with the Village in the amount of \$600,000. The Agreement would only be valid if Rosen secures a Genesis dealership by the end of this calendar year. With initial stabilized sales projected to generate at least \$175,000 in new sales tax to the Village annually, this proposal would have a "payback" of just over 3 years. The proposed agreement is attached, which has been reviewed by the Village Attorney.

Scott Levy of Rosen will be present at the October 9 Committee meeting to further discuss this request.

Consensus to forward this Agreement to the Board for approval is recommended.

## **BUSINESS DEVELOPMENT AGREEMENT**

THIS BUSINESS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between THE VILLAGE OF ALGONQUIN, Kane and McHenry Counties, Illinois, an Illinois Home Rule municipal corporation duly organized and existing under the laws of the State of Illinois ("Village"), and ROSEN HYUNDAI ENTERPRISES, LLC, an Illinois Limited Liability Company, ("Rosen"), and its affiliated real estate company, LRR, LLC, an Illinois Limited Liability Company ("LRR").

### **WITNESSETH:**

WHEREAS, Rosen and/or LRR, owns certain real estate located within the corporate limits of the Village of Algonquin, Illinois, which real estate is legally described in Exhibit A attached hereto (the "Rosen Property"); and

WHEREAS, on a portion of that certain real estate, Rosen currently operates a Hyundai dealership located at 771 South Randall Road; and

WHEREAS, on other portions of that certain real estate, Rosen and/or LRR owns both a lot with a multi-tenant retail building at 775-785 Randall Road, and another automobile dealership at 789 Randall Road; and

WHEREAS, Rosen desires to develop additional sales display areas on the Rosen Property and to enhance the dealership and other uses thereon and to remodel one or more of the existing buildings, expand the outdoor vehicle display areas on site, and operate a separate and unique Genesis vehicle dealership selling new automobiles in addition to the existing Hyundai dealership; and

WHEREAS, all of the improvements described in these recitals are referred to in their entirety as "the Project" which project is described in more detail in Exhibit \_\_\_\_.

WHEREAS, the Project would not be feasible for Rosen without the Village's economic assistance; and

WHEREAS, in order to make it economically feasible for Rosen to develop the Rosen Property and to construct and remodel the motor vehicle dealership and service facilities thereon, the Village has agreed to offset costs for a portion of the on-site and off-site development costs of the motor vehicle dealership and commercial development through the use of a rebate of a portion of the Sales Tax Revenue generated by Rosen on the Rosen Property within the corporate limits of the Village (the "Sales Tax Rebate"). The term "Sales Tax Revenue," as used herein, shall mean that portion or component of the taxes imposed and collected by the State of Illinois pursuant to the Retailer's Occupation Tax Act, the Service Use Tax Act, the Service Occupation Tax Act and the Use Tax Act (including without limitation a vehicle lease tax that is substituted or a portion for all of the foregoing), generated by Rosen on all or any portion of the Rosen Property, that the Village actually receives from the State of Illinois; and

WHEREAS, in exchange for the benefits derived from this Agreement, Rosen has agreed to develop the Rosen Property with certain upgraded design features including quality architecture; parking lot, perimeter and foundation landscaping; decorative entryways; ornamental lighting; and tasteful signage, consistent with the plans approved by the Village Board as part of the final planned development; and

WHEREAS, Rosen will be required to first comply with all planning and zoning regulations and apply for and receive approval for an amendment to the final PUD prior to said Sales Tax Rebate and waiver of fees; and

WHEREAS, the President and Board of Trustees have determined that it is in the Village's best interest to enter into this Agreement because Rosen's proposed improvements are expected to improve the social and economic welfare of the Village by generating increased real estate tax revenues, additional sales tax revenues and increased employment opportunities within the Village; and

WHEREAS, the Village may enter into this agreement pursuant to its home rule powers; and

WHEREAS, the Village may further authorize this incentive under the authority of 65 ILCS 5/8-1-2.5 regarding expenses for economic development; and

WHEREAS, the Village is further authorized by 65 ILCS 5/8-11-20 to enter into sales tax sharing agreements; and

WHEREAS, the Village has made the findings required by law at 65 ILCS 5/8-11-20; specifically,

That a portion of the Rosen Property has been underutilized for a period of at least one year; and

That the Project is expected to create or retain job opportunities within the Village; and

That the Project will serve to further the development of adjacent areas; and

That without the agreement, the Project would not be economically feasible; and

That Rosen meets high standards of creditworthiness and financial strength as demonstrated by one (1) or more of the following:

1. Corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or higher by Moody's Investors Service, Inc.;
2. A letter from a financial institution with assets of Ten Million and 00/100 Dollars (\$10,000,000.00) or more attesting to the financial strength of the developer; or
3. Specific evidence of equity financing for not less than ten percent (10%) of the total Project costs; and

That the Project will strengthen the commercial sector of the Village; and

That the Project will enhance the tax base of the Village; and

That the agreement is made in the best interest of the Village; and

WHEREAS, the tax on the retail sales subject to this Agreement, absent the Agreement, would not have been paid to another unit of local government; and Rosen affirms that it does not maintain, within another unit of local government, a retail location from which the tangible personal property to be sold from the businesses on the Rosen Property would have been delivered to purchasers, or a warehouse from which the tangible personal property would have been delivered to purchasers.

NOW THEREFORE, in consideration of the foregoing and the covenants hereinafter set forth, it is mutually agreed as follows:

1. Recitals: The recitals set forth hereinabove are hereby incorporated by reference, as if fully set forth herein.
2. Legislative Authority: The Village of Algonquin made the findings of fact required by 65 ILCS 5/8-11-20. The Village represents that the adoption of this Agreement is within its scope of its authority and that it is duly authorized and empowered to enter into and carry out the terms of this Agreement.
3. Parties to the Agreement: This Agreement is made by and between Rosen and the Village as the parties to the Agreement. If Rosen ceases to operate on the Rosen Property at any time during the term of this Agreement for a period of longer than six (6) months, other than in connection with remodeling or reconstructing the Project or for reasons not within the reasonable control of Rosen, the Village shall have no further obligations under this Agreement.
4. Responsibilities of Rosen: Rosen agrees to diligently undertake the following:
  - A. By no later than December 31, 2018, Rosen shall obtain from Genesis Motor Corporation a dealership agreement for Genesis, which shall be a condition precedent to any further obligation of either party under this Agreement, and shall maintain same during the term of this Agreement;
  - B. Rosen or LRR shall apply for and obtain zoning approvals and tenant buildout permits and commence construction necessary to establish a Genesis sales office and showroom on the Rosen Property, and diligently prosecute same to completion;
  - C. Rosen or LRR agrees to construct all improvements in substantial accordance with Village codes, plans and specifications to be submitted and approved by the Village. If Rosen's improvements create a need for additional storm water retention capacity, the Village will use its best efforts to provide said capacity on the adjoining Village owned property at no additional cost to Rosen.

5. Limitation of Village Responsibilities: Other than the Sales Tax Rebate pursuant to this Agreement, the Village shall have no obligation to incur any expense associated with the construction and completion of the motor vehicle dealership or other commercial uses.

6. Sales Tax Rebate: Rosen shall be entitled to receive, on a quarterly basis, a Sales Tax Rebate as follows:

A. Commencement Date: After approval and execution of this Agreement, the sales tax rebate as outlined further below shall begin upon Rosen completion of and closing on a Franchise Agreement with Genesis Motor Corporation for a Genesis dealership to be located at the Rosen Property. Rosen shall notify the Village of the date said agreement has been executed, and provide reasonable proof of same to the Village. That date shall be the "Commencement Date".

B. The Village shall retain twenty-five percent (25%) of all Sales Tax Revenue generated upon the Rosen Property after the Commencement date and shall pay a Sales Tax Rebate to Rosen of the remaining seventy-five percent (75%) of such Sales Tax Revenue generated by the Project for a ten (10) year period after the Commencement Date or until such time as the total Sales Tax Rebate paid to Rosen by the Village equals or exceeds the Rebate Cap (as defined in Section 7 below), whichever occurs first (such period of time is hereinafter referred to as the "Rebate Term"). At the conclusion of the Rebate Term, the Village shall have no further obligations under the terms of this Agreement (other than to pay Sales Tax Rebates arising from taxable events during the Rebate Term, which have not yet been paid to Rosen prior to the Termination Date, which obligation shall survive the expiration of this Agreement). The Village shall have no obligation to pay any funds to Rosen from any source other than from the Municipal Retailers' Occupation Sales Taxes generated upon the Rosen Property and actually received by the Village from the Illinois Department of Revenue.

C. Rosen shall provide the Village with a durable power of attorney enabling the Village to obtain certified reports from the Illinois Department of Revenue, , Illinois Department of Revenue document "Authorization to Release Sales Tax Information to Local Governments", or any other such authorization necessary to enable the Village to obtain certified reports from the Illinois Department of Revenue, verifying the taxable sales by Rosen for each calendar year.

D. Rosen covenants and agrees that it files all records with the Illinois Department of Revenue electronically and guarantees to continue to file all records electronically.

E. Rosen covenants and agrees that it will continue to offer automotive service and sales of primarily new and used automobiles in the Village during the Rebate Term of this Agreement.

7. Maximum Rebate Amount (Rebate Cap): Notwithstanding anything in this Agreement to the contrary, the combined total of the Sales Tax Rebate amounts payable to Rosen by the Village under this Agreement shall not exceed \$600,000.00.

8. Payment to Rosen shall be made on a quarterly basis, within sixty (60) days from and after the Village's actual receipt of the Village's distributive share of Sales Tax Revenue. The Village shall provide Rosen with a report of all Sales Tax Revenue generated by Rosen and actually received by the Village for the preceding period.

9. Sales Tax Reports: Within thirty (30) days after the end of each quarter, Rosen shall provide the Village with a statement, accompanied by a summary of the Gross Receipts for such quarter, in a form reasonably acceptable to the Village, signed by one of its officers, which shall set forth the dollar amount of Sales Taxes paid to the State of Illinois for the benefit of the Village during the prior quarter. The term "Gross Receipts," as used herein shall have the same meaning as that which is ascribed to it in the Retailer's Occupation Tax Act. The term "quarter" as used herein shall mean each successive three-month period after the commencement of the Agreement through the Termination Date of this Agreement. Additionally, Rosen shall maintain and have available for inspection by the Village copies of all sales tax returns, sales tax reports, amendments, proof of payment or any other Sales Tax information filed with the State of Illinois or other appropriate governmental entity, which documents are being held available for the Village for purposes of identifying Sales Tax Revenue collected pursuant to this Agreement. Rosen also agrees, upon the request of the Village, to furnish such consent, powers of attorney or waivers as may be required by the Illinois Department of Revenue to allow the Illinois Department of Revenue to furnish to the Village sales tax information concerning the Rosen dealership. Additionally, the Village shall seek to obtain such Sales Tax information directly from the Illinois Department of Revenue.

10. Confidentiality of Financial Information: To the extent permitted by law, the Village shall endeavor to maintain the confidentiality of the information contained in any financial reports submitted by Rosen, the Lease and Sales Tax information received by the Village, but shall be permitted to disclose such information and documents to employees and consultants that the Village, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement (except for any consultant that has a financial interest in any motor vehicle dealership within the Chicago metropolitan area, which consultant shall not be retained). Rosen understands and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments to Rosen pursuant to this Agreement.

11. Mutual Assistance: The Village and Rosen agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

12. Provisions Concerning Limitation on Debt: The receipt, or anticipated receipt, of Sales Tax Revenue, either directly or indirectly, from Rosen, as provided earlier in this Agreement, shall be a condition precedent to any obligation of the Village to pay monies to Rosen.

13. Governing Law, Waiver and Notices: This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the Twenty-Second Judicial Circuit, McHenry County, Illinois. A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement. Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail, return receipt requested, or by delivering the same in person or to any officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to the Village shall be sent to:

Village Manager  
Village of Algonquin  
2200 Harnish Drive  
Algonquin, IL 60102

With a copy to :  
Village Attorney  
Kelly A. Cahill  
Zukowski, Rogers, Flood & McArdle  
50 Virginia St.  
Crystal Lake, IL 60014

All notices to Rosen or LRR shall be sent to:

Scott Levy  
c/o Rosen Enterprises LLC  
771 South Randall Road  
Algonquin IL 60102

With a copy to:

Steven P. Bloomberg  
Chuhak & Tecson, P.C.  
30 S. Wacker Drive, Suite 2600  
Chicago, IL 60606-7413

or to such other address as a party may designate for itself by notice given from time to time to the other parties in the manner provided herein.



14. Time is of the Essence: Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof, and they hereby acknowledge that the successful performance of this Agreement requires their continued cooperation.

15. Default and Remedies: The failure by Rosen to comply with any material term, provision, or condition of this Agreement within the times herein specified in any material respect after notice and an opportunity to cure shall constitute an event of default. Upon the occurrence of an event of default by Rosen, the Village shall provide written notice to Rosen specifying the nature of the default. Upon receipt of such notice of default, Rosen shall have ninety (90) days to cure the default, if it can reasonably be cured within ninety (90) days, or must begin curing the default within a reasonable time thereafter, if it cannot be cured within ninety (90) days. If a default by Rosen is not cured as provided above, the Village may withhold payment of any Sales Tax Rebate that may be due, until Rosen establishes compliance with the terms of this Agreement, or the Village may terminate this Agreement, as its sole and exclusive remedies, and, in the event of a termination by the Village, the Village shall be relieved of any further obligations arising pursuant to this Agreement, and Rosen shall be relieved from its obligations hereunder.

The Village shall be considered in default of this Agreement if it shall fail to make complete and timely payments to Rosen on the terms provided herein or fail to comply with any other material term or condition of this Agreement. In such event, Rosen shall notify the Village of the default in writing, and the Village shall have a period of ninety (90) days thereafter to cure such default. The Village's failure to cure the default shall relieve Rosen of its obligations under this Agreement, and Rosen may terminate the Agreement or seek the remedy of specific performance from the Village as its sole and exclusive remedy. The Village shall not be liable for any consequential damages.

This Paragraph shall not apply for issues related to force majeure or other circumstances beyond the reasonable control of Rosen or the Village, provided that Rosen or the Village have taken reasonable actions and made commercially reasonable, good faith efforts to otherwise comply with the deadlines set forth herein.

16. Destruction of Improvement: In the event that the improvements on the Rosen Property shall be destroyed by an act of God, natural causes or catastrophe, prior to the fully payout of the sales tax rebate pursuant to the terms herein, then the obligation of the Village to share Sales Tax Revenue with Rosen shall be extended for a period of time equal to the lesser of the following:

A. The interval commencing on the date of the destruction of the improvements and ending on the date a new certificate or occupancy for the rebuilt improvement is issued; or

B. Twelve (12) months.

17. Entire Agreement: This instrument contains the entire agreement between the parties with respect to the transaction contemplated in this Agreement.

18. Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction, after exhaustion of all appeals or periods for such, or in the event such a court shall determine that the Village does not have the power to perform any such provision, after exhaustion of all appeals or periods for such, such provision shall be deemed to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of any of its monetary obligations under Section 6 of this Agreement, then this Agreement shall terminate.

19. Amendment: This Agreement may not be amended, altered or revoked at any time, in whole or in part, unless such changes are agreed to in writing and signed by all of the parties to this Agreement.

20. Binding On: This Agreement shall be binding on the parties, and their respective successors, assigns, heirs and legal representatives.

21. Section and Other Headings: Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

22. Authorization to Execute: The officers of Rosen who have executed this Agreement warrant that they respectively have been lawfully authorized by the Board of Directors of Rosen to execute this Agreement on its behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of Algonquin to execute this Agreement. Rosen and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ROSEN HYUNDAI ENTERPRISES, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

LRR, LLC, an Illinois limited  
liability company

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

VILLAGE OF ALGONQUIN,  
an Illinois Home Rule municipal corporation

By: \_\_\_\_\_  
John Schmitt, President

ATTEST:

By: \_\_\_\_\_  
Gerald Kautz, Village Clerk



**VILLAGE OF ALGONQUIN**  
*GENERAL SERVICES ADMINISTRATION*

**– M E M O R A N D U M –**

DATE: October 1, 2018

TO: Tim Schloneger, Village Manager

FROM: Kevin Crook, Information Systems Director

SUBJECT: *Cityworks (Asset Management Software) 3-Year Agreement Extension*

---

In an effort to control escalating annual recurring costs and to scale with growth, the Village is recommending the approval of a 3-year agreement extension for Cityworks. The contract will lock our annual recurring cost of \$30,000.00 through the end of fiscal year 2021. Additionally, the updated language in our contract will allow the Village to have third party vendors utilize Cityworks; for both completing work and designing in-house solutions, such as CityFront.

## CITYWORKS® LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement made by and between Azteca Systems, LLC (“Azteca Systems”) a Delaware limited liability company, with a place of business at 11075 South State, Suite 24, Sandy, Utah 84070 USA and the **Village of Algonquin, Illinois**, using certain of Azteca Systems Licensed Products hereinafter referred to as “Licensee.” This Agreement is effective immediately upon delivery of Licensed Products (the “Effective Date”).

Azteca Systems Products are licensed under the terms and conditions of the Agreement. This agreement, when executed by the licensee named below (“Licensee”) and Azteca Systems, LLC (Azteca Systems), as licensor of the Software, Online, Services, and Documentation licensed under the License Agreement, will supersede any previous Agreements including the License Agreement presented in the installation process requiring acceptance by electronic acknowledgement and will constitute a signed License Agreement.

This signed Agreement includes (i) this License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support and (iv) Addendum #3 – Third Party Contractor Acknowledgment.

This signed Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party’s original signature is not delivered.

### ARTICLE 1—DEFINITIONS

#### 1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee’s employees; (ii) Licensee’s consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software’s public web portal (if applicable). Other than limited use of the Products through the software’s web portal, the public is not considered an authorized user.
- d. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- e. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- f. "Deployment Server License" means a license that, in addition to providing staging server License rights, authorizes Licensee to install and use the Software for deployment in Licensee’s internal use.
- g. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee’s internal use to provide testing License rights prior to deployment.
- h. "Documentation" means all user reference documentation that is delivered with the Software.
- i. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee’s internal operations but does not include access of the Licensed Products by, or use of the Licensed Products in the provisions of services to, Licensee’s clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- j. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the

Documentation to which Licensee has purchased a License as identified as specified in Addendum #1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software, Online Services, and Documentation licensed under the terms of this license Agreement.

- k. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- l. "Online Services" means any Internet-based system, including applications and associated APIs, hosted by Azteca Systems or its licensors, for storing, managing, publishing, and using Cityworks software and data, and other information.
- m. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- n. "Preview" means any alpha, beta, or prerelease Product.
- o. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- p. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- q. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, updates, upgrades, and service packs.
- r. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.
- s. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

## ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Products are licensed, not sold. Azteca Systems and its licensors own Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. This Agreement does not transfer ownership rights of any description in the Software, materials, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. Azteca Systems and its third-party licensors reserve all rights not specifically granted in this Agreement including the right to change and improve Products.

## ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; and (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) Licenses. Licensee may allow Third Party Contractors to access and use the licensed Software, provided Licensee and Third Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third Party Contractor Acknowledgment (if applicable) collectively, are incorporated in this Agreement.

- a. *Software.* Use and License for specific Software products are set forth in Addendum 1- Product Licensing Addendum, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum 2, - Standard Maintenance and Support which terms are incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third Party Contractor software usage (if applicable) are set forth in Addendum #3, which is incorporated by reference.

**3.2 Preview Release Licenses.** Products acquired under an evaluation license or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Licensee's own risk, and the Products do not qualify for Azteca or distributor maintenance.

**3.3 Special Use Programs.** If Licensee acquires Products under a special program for noncommercial, nonprofit, educational, or other limited-use license, Licensee's use of the Products is subject to the terms set forth in the applicable enrollment form or as described on Azteca's website in addition to the non-conflicting terms of this Agreement. All such program terms are incorporated herein by reference.

**3.4 Delivery.** Unless otherwise requested by Licensee, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Property by electronic download and a license key to activate the Licensed Property.

## ARTICLE 4—SCOPE OF USE

### 4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may:
  1. Install and store Products on electronic storage device(s);
  2. Make archival copies and routine computer backups;
  3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
  4. Move the Software in the licensed configuration to a replacement Server.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, LLC. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca. Licensee shall be solely responsible for compliance by Third Party Consultants and Contractors with this License Agreement and shall ensure that the Third Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

**4.2 Uses Not Permitted.** Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Redistribute Authorization Codes;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;

- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Separate from the licensed use of APIs, Licensee may not unbundle or independently use individual or component parts of the Products, Software, or Online Services;
- l. Unbundle or independently use the individual or component parts of Software or Online Services;
- m. Incorporate any portion of the Software into a product or service that competes with the Software;
- n. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- o. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

## ARTICLE 5—TERM AND TERMINATION

5.1. This License Agreement is effective upon date and signature of Licensee below. The initial term of this License Agreement will begin upon the dates set forth in Addendum 1 and provided the fees are paid. This License agreement and its maintenance provisions may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum 1.

5.2. Either party may terminate this License Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure.

5.3. Termination for Convenience: Either party may terminate this Agreement by giving the other party thirty (30) days' written notice prior to the end of the current Term Maintenance Period.

5.4. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the Termination for Convenience option to terminate this Agreement in whole or in part. If a party to this Agreement chooses to terminate for convenience that party may do so by thirty (30) days' written notice to the other party.

5.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

5.6. If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance and support services rendered or products and software received and accepted prior to the effective date of termination.

5.7. If this Agreement is terminated under section 5.3 or 5.4 above, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then for no additional charge to Licensee and at Licensee's option either grant a license to the Licensee, for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

5.8. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems



shall remain in force should breach or termination of any kind occur.

## **ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS**

**6.1 Limited Warranties.** Except as otherwise provided in this Article 6, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

**6.2 Special Disclaimer.** CONTENT, DATA, SAMPLES, NEW VERSIONS, HOT FIXES, PATCHES, SERVICE PACKS, UPDATES, UPGRADES, AND ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, AND EVALUATION, TEST AND BETA SOFTWARE ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND.

**6.3 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

**6.4 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. AZTECA SYSTEMS DOES NOT WARRANT THAT PRODUCTS, MAINTENANCE OR ANY TECHNICAL SUPPORT SERVICES PROVIDED HEREIN WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. LICENSEE SHOULD NOT FOLLOW ANY SUGGESTIONS OR INSTRUCTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

**6.5 Exclusive Remedy.** Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Azteca Systems' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Azteca Systems Maintenance Services and Support Addendum; or (iii) return of the license fees paid by Licensee for the current period, prorated for the current period, for Software or Online Services that do not meet Azteca Systems limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

**6.6** If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure delivery of parts, supplies, services, or power; war, threat of actual terrorist act, cyberattack, or other violence; any law order, proclamation, regulation, ordinance, or demand; or any condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention interference, or restriction.

## **ARTICLE 7—LIMITATION OF LIABILITY**

**7.1 Disclaimer of Certain Types of Liability.** AZTECA SYSTEMS, ITS AUTHORIZED DISTRIBUTOR (IF ANY), AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES;

INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AND MAINTENANCE AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT AZTECA SYSTEMS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7.2 General Limitation of Liability.** EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF AZTECA SYSTEMS AND ITS AUTHORIZED DISTRIBUTOR HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE DURING THE CURRENT MAINTENANCE AND SUPPORT PERIOD, FOR THE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

**7.3 Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Products or any other product or service delivered by Azteca Systems. The parties agree that Azteca Systems has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. AZTECA SYSTEMS DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

## **ARTICLE 8—INFRINGEMENT INDEMNITY**

**8.1** Azteca Systems shall defend, indemnify as described below, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, arising out any claims, actions, or demands by a third party legally alleging that Licensee's licensed use of Software or Online Services infringe a US patent, copyright, or trademark, provided:

- a. Licensee promptly notifies Azteca Systems in writing of the claim;
- b. Licensee provides documents describing the allegations of infringement;
- c. Azteca Systems has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates in the defense of the claim at Azteca Systems' request and expense.

**8.2** If Software or Online Services are found to infringe a US patent, copyright, or trademark, Azteca Systems, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or Online Services or (ii) modify the allegedly infringing elements of Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Azteca Systems any infringing item(s). Azteca Systems entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and refund the unused portion of fees paid, prorated for the current maintenance and support period.

**8.3** Azteca Systems shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Software or Online Services with a product, process, or system not supplied by Azteca Systems or specified by Azteca Systems in its Documentation; (ii) material alteration of Software or Online Services by anyone other than Azteca Systems or its subcontractors; or (iii) use of Software or Online Services after modifications have been provided by Azteca Systems for avoiding infringement or use after a return is ordered by Azteca Systems under Section 8.2.

**8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF AZTECA SYSTEMS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**

## **ARTICLE 9—GENERAL PROVISIONS**

**9.1 Future Updates.** New or updated Products and subscription renewals will be licensed under the then-current Azteca Systems license terms and conditions included with the deliverable Products.

**9.2 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

**9.3 Taxes and Fees, Shipping Charges.** License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

**9.4 No Implied Waivers.** The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.5 Severability.** The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**9.6 Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this License Agreement.

**9.7 Survival of Terms.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement, and the provisions of section 4.1 of Addendum 2, shall survive the expiration or termination of this License and Maintenance Agreement.

**9.8 Equitable Relief.** Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Azteca Systems shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

**9.9 US Government Licensee.** The Products are commercial items, developed at private expense, provided to Licensee under this License Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this License Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

**9.10 Governing Law, Disputes, and Arbitration.** This License Agreement shall be governed by and construed

in accordance with the laws of the State of Utah without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property. Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof shall be resolved in the following order:

- *Consultation and negotiation in good faith and a spirit of mutual cooperation;*
- Mediation, by a mutually acceptable mediator chosen by the parties, which cost is shared equally;
- If the matter cannot be settled through negotiation or mediation, then it shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. If Licensee is a US government agency, this License Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613), in lieu of the arbitration provisions of this clause. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**9.11 Maintenance.** Maintenance for qualifying Software consists of updates and other benefits, such as access to technical support, are provided during the Term of Use. Maintenance is specified as set forth in Addendum #2.

**9.12 Feedback.** Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Cityworks Software or Products, and any related intellectual property, are owned by Azteca Systems.

**9.13 Patents.** Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

**9.14 Entire Agreement.** This License Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this License Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed and made effective by their respective authorized representatives.

**AZTECA SYSTEMS, LLC**

**VILLAGE OF ALGONQUIN, IL**  
– (LICENSEE)

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

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

Name: Brian L. Haslam

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

Title: President - CEO

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

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

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

## **ADDENDUM #1**

### **PRODUCT LICENSING**

1. **Licensed Software:**

Server AMS Custom Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified

Products:

Office

Tablet

AMS Mobile Native Apps (for iOS/Android)

--Includes the following Add-ons:

Storeroom

Equipment Checkout

Contracts

Cityworks Analytics for AMS

eURL (Enterprise URL)

CCTV Interface for PACP

MicroPaver Interface

Citizen Engagement API

Local Government Templates (LGT)

*Annual fee herein is based on a 25,001 - 50,000 population range*

*Additional Software Products & Licenses: Additional Software Products & licenses may be added to this License Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable being paid.*

2. **Notices & Licensee Information: Until or unless otherwise, modified, all notices relevant to this agreement shall be sent to the following address:**

<b>Azteca Systems, LLC</b> 11075 South State, Suite 24 Sandy, Utah 84070	<b>Village of Algonquin</b> 2200 Harnish Drive Algonquin, IL 60102
	Attn: Kevin Crook
	E-mail: <a href="mailto:kevincrook@algonquin.org">kevincrook@algonquin.org</a>
	Phone: 847.658.2700 ext. 239

3. **Delivery Date/Effective Date of Software**

***MM/DD/YYYY***

***06/01/2018***

#### 4. Schedule of Payments and Fees under License and Maintenance Agreement

Support Period	Date From/To (mm/dd/yyyy)	Amount
Period 1	06/01/2018 – 05/31/2019	\$30,000.00*
Period 2	06/01/2019 – 05/31/2020	\$30,000.00
Period 3	06/01/2020 – 05/31/2021	\$30,000.00

\* Fee for period 1 has been paid previously

#### 5. Additional

Updates to the above licensed software means a subsequent release of the program which Azteca generally makes available to its supported customers as part of the annual maintenance plan for which fees have been paid.

Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed above changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license fees have been paid.

Updates may not always include any release, option or future program that Azteca licenses separately. Updates are provided when available (as determined by Azteca). Azteca is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. You shall be responsible for copying, downloading and installing the updates.

## **ADDENDUM #2**

### **STANDARD MAINTENANCE AND SUPPORT**

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca, Systems, LLC. Maintenance and Support are provided subject to the terms and conditions of the signed License Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support Services consist of the following benefits: Technical support, new version software, service packs, software upgrades, and software updates.

1.1. Azteca Systems will ensure upward compatibility for the Covered Software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for Covered Software Applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- (a) Software Updates. Software Updates includes Upgrades and service packs which are a collection of files that enhance or correct the Covered Software and which will be available for Licensee to download during the Maintenance Term/Period. Updates and Upgrades may also include new versions;
- (b) Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
- (c) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

1.3 The following items, among others, however, are specifically excluded as support services under this section of this Maintenance and Support:

- (a) Support for applying or installing upgrades and service packs;
- (b) Assistance with questions related to third party software, computer hardware, networking, and other similar items that are not provided by Azteca;
- (c) Assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;
- (d) Licensee Data debugging and/or correcting;
- (e) Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the Covered Software, including but not limited to neglect, abuse, unauthorized modifications and/or unauthorized updates;
- (f) Consulting regarding customizations created to function with the Covered Software unless the customization is identified and listed as Covered Software in Addendum 1;
- (g) Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
- (h) Questions such as configuration, implementation and walk-throughs.

1.4 Support Periods are renewable unless terminated as provided in Section 3 below. The Maintenance Services consists of software and documentation updates and access to technical support via telephone, email, web-based ([www.MyCityworks.com](http://www.MyCityworks.com)) and after hours support as set forth in Section 1 of this Addendum.



1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum 1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

## 2. PROCEDURES FOR ACCESSING SUPPORT:

2.1. All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within 4 hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide, an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems Licensee will submit support requests during normal business hours as outline in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.



### 3. CHARGES/FEES

3.1. License, Maintenance and Support Services herein are included in the payment of annual fees as set forth in Addendum #1, and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1, and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum 1 subsequent to year three (3) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. Azteca Systems will notify Licensee of the new pricing no later than ninety (90) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. Azteca Systems will continue to provide technical support for an additional thirty (30) days, but Licensee will no longer receive Software updates released after the Maintenance term's expiration. If Licensee does not reinstate Maintenance within thirty (30) days of the expiration date, Licensee will no longer receive technical support. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

### 4. MISCELLANEOUS

4.1. **Data Confidentiality Statement:** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing The Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

4.2. **No Implied Waivers:** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

### **ADDENDUM #3**

#### **THIRD PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT**

If Licensee engages any Third Party Contractor and desires to grant access to or permission to use the licensed software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by any third party is solely for Licensee's benefit;
2. The Third Party Contractor (or, if applicable, its employee) shall be considered, as applicable, the Authorized User for purposes of the applicable license type, and all use by such contractor shall be in accordance with the terms and conditions of the License and Maintenance Agreement;
3. Before accessing the Licensed Products, the Third Party Contractor agrees in writing that (a) the software shall be used solely in accordance with the terms of this Agreement and solely for Licensee's benefit and (b) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be liable for any and all actions or omissions of the Third Party Contractor with respect to the use of the Licensed Products, as if such actions or omissions were the Licensee's;
5. Upon expiration or termination of this License Agreement, the rights of usage to any Third Party Contractor shall immediately terminate;
6. Use of the Software by such Third Party Contractors on Licensee's behalf will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by such contractor;
7. Any breach of this Agreement by any Third Party Contractor(s) will be deemed to be a breach by Licensee;
8. Licensee will ensure that Third Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee; and
9. Any Third Party Contractor must sign a copy of this Addendum acknowledging that it has a copy of the License Agreement and agrees to the terms herein, further Licensee shall provide a signed copy of this Addendum for every Third Party contractor to which it has granted permission to access and/or use the licensed software;

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third-Party Contractor acknowledges acceptance by signing below, and providing a copy to Azteca Systems at [contracts@cityworks.com](mailto:contracts@cityworks.com).

\_\_\_\_\_  
Third Party Contractor Name (Print)

By: \_\_\_\_\_  
Authorized Signature

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



VILLAGE OF ALGONQUIN  
MEMORANDUM

---

DATE: October 3, 2018

TO: Committee of the Whole

FROM: Michelle Weber

SUBJECT: Liquor Code Amendment

---

In accordance with an ordinance passed in 2013 limiting the number of allowable liquor licenses in all classes to the number of licenses issued at that time, the attached proposed ordinance increases the number of available Class A-3 and Class F liquor licenses by one. These changes are the result of requests from:

- Cattleman's Burger & Brew, Inc., 205 S. Main Street, Algonquin, a new restaurant opening soon in our downtown area. This license will allow them to serve alcohol for consumption on premises, and shall permit the sale of wine in sealed containers for consumption off premises.
- MOD Super Fast Pizza, Inc., dba MOD Pizza, 228 S. Randall Road will be opening soon next to McAllister's Deli. This license will allow them to serve beer and wine for consumption on premises and in their patio area.

Staff recommends that the change in the number of available licenses be approved.

Attachment

# ORDINANCE NO. 2018-O-XX

## ***An Ordinance Amending Chapter 33, Liquor Control and Liquor Licensing, of the Algonquin Municipal Code***

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

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

SECTION 1: Section 33.07-B, Paragraph 4 and 13 Number of Licenses Issued, of the Algonquin Municipal Code shall be amended as follows:

4. Eight Class A-3 licenses at any one time.
13. Ten Class F Licenses at any one time.

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

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

SECTION 4: This Ordinance shall be in full force and effect October 10, 2018, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Voting Aye:

Voting Nay:

Abstain:

Absent:

APPROVED:

(SEAL)

---

Village President John C. Schmitt

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

Passed:

Approved:

Published:



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

**– M E M O R A N D U M –**

DATE: October 3, 2018

TO: Tim Schloneger, Village Manager

FROM: Robert Mitchard, Public Works Director

SUBJECT: *Phase 2 Engineering Services – Ratt Creek Reach 5 Restoration*

---

Attached, you will find a copy of the agreement with Applied Ecological Services, Inc. for Phase 2 design services for Ratt Creek Reach 5 Restoration an amount not to exceed \$33,900.00.

This proposal follows up the Phase 1 design of the project which was completed by Applied Ecological Services in 2017. Phase 1 got the project plans to 90% completion. This phase of the design will provide final plans, bid documents, and get us through the permitting process with the Environmental Protection Agency, the Illinois Department of Natural Resources and the U.S. Army Corp of Engineers.

This reach of Ratt Creek is part of a larger initiative in the Village of Algonquin to restore our creeks to healthy functioning storm water systems. The attached map shows the location of the project. Now that the Harper Drive bike path connection has been constructed, we would like to clean up and restore the creek and the High Hill Dam detention area. This will make a much more pleasurable experience of the natural area for people using the path. This creek is also experiencing heavy erosion and down cutting causing siltation to build up behind the dam. This area is identified in the Jelkes Creek-Fox River Watershed Plan for restoration and is therefore eligible to receive IEPA 319 Water Quality Grant Funding. Once the final design is completed, we will be submitting this project for grant funding when the EPA is again accepting proposals in the Fox River watershed. We are expecting this to be in FY 2019-20.

Applied Ecological Services has designed and installed many of our projects in the Jelkes Creek-Fox River watershed including Blue Ridge, Yellowstone and Countryside Detention Naturalizations, Lawndale Park Creek Restoration, and the Falcon Ridge Nature Preserve. They also completed the engineering design for Reach 1 of Ratt Creek mentioned above. Their knowledge and experience with this area 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 Ratt Creek Reach 5 Phase 2 engineering services to Applied Ecological Services, Inc. for \$33,900.00.

## Consulting Proposal and Agreement

---

### Project Information

---

Project Name: Ratt Creek Reach 5 90% & Final Design Plan & Permitting

AES Project Number: 18-0694

Branch: West Dundee, IL

August 31, 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 90% & Final Design Plan and Permitting for Ecological Restoration of Ratt Creek Reach 5. 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



## **I. SCOPE OF WORK**

### **Task 1. Site Visit & Misc Meetings**

An AES Ecologist and Landscape Architect will meet onsite with the Village to discuss the Preliminary Plan dated April 2017 complete by AES. AES will use the Preliminary Plan for use during the site visit to confirm that site conditions remain the same since the original October 2016 site visit. AES will note any changes and incorporate the changes into the 90% and Final Design Plans. AES will also attend miscellaneous meetings with the Village to discuss the project and/or attend a public meeting.

*Product:* Site visit with client and Misc meetings

*Lump Sum Fee:* \$2,200

### **Task 2. 90% & Final Design Plan & Cost Estimates**

An AES Ecologist and Landscape Architect will develop 90% and Final Design Plans, including specifications, for Ratt Creek Reach 5. AES will incorporate any changes observed during the site visit as well as address Village comments dated August 7, 2017. AES will submit an electronic copy of the 90% Design Plan to the Village & CBBEL for one review and comment and incorporate all changes. AES will also incorporate all changes that may be required by the Corps & IDNR-OWR to make the project permissible. In addition, AES will prepare an Opinion of Probable Cost for Construction for the 90% and Final Design Plans. The Final Design Plan will be signed by a Certified Engineer. The 90% and Final Design Plans will include:

1. Title Sheet with the project location map, general notes, and materials/quantities schedule;
2. Construction Specification Sheets including General Provisions, Selective Woody Tree & Brush Removal, Grading, Slope Protection, Rock Based Channel Stabilization, Soil Preparation, Native Seeding, Native Herbaceous Perennial Planting, Native Tree Planting, and Management of Plantings & Stream Structures;
3. Existing Condition Sheets depicting existing topographic conditions etc;
4. Tree Preservation Sheets showing desirable trees to remain;
5. Layout and Grading Sheets showing existing and proposed topography contours and streambank/channel treatments;
6. Stream Profile & Cross Section Sheets showing existing and proposed conditions. Cross sections will be provided every 50-100';
7. Planting Plan Sheets with associated native seed and plant plug lists and quantities;
8. Erosion Control Sheets outlining erosion control measures;
9. Detail Sheets with typical channel cross sections, riffle details, planting details, erosion protection details, etc.

*Product:* 90% & Final Design Plans & Cost Estimates

*Lump Sum Fee:* \$13,000

### **Task 3. 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 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:* \$4,500

#### **Task 4. IDNR-OWR Floodway Construction Permitting**

According to the Federal Emergency Management Agency (FEMA), Flood Insurance Rate Map (FIRM) Panel 341J, effective November 16<sup>th</sup>, 2006, the project is located in unstudied Zone A floodplain associated with Ratt Creek. The tributary area to the project site is approximately 1.4 square miles. The Zone A portion of Ratt Creek immediately downstream of the project site has been revised with a Letter of Map Revision (LOMR) effective December 1<sup>st</sup>, 2011. The proposed project will require a floodway construction permit from the Illinois Department of Natural resources - Office of Water Resources (IDNR-OWR). CBBEL will subcontract with AES to complete an IDNR-OWR floodway construction permit. CBBEL will obtain the regulatory hydrologic and hydraulic modeling from the Illinois State Water Survey that was previously used to complete the LOMR. CBBEL will extend the regulatory modeling through the project site using AES's 90% Plan drawings to complete the hydraulic modeling extension. CBBEL will determine if the proposed improvements shown on AES's 90% Plan drawings meet IDNR-OWR Floodway Construction criteria. If modifications are necessary, CBBEL will coordinate with AES to make the project permittable. It is anticipated that this will take two iterations. The application fee for the IDNR-OWR floodway construction permit is \$2,690 and is included in the fee below. This task does not include Additional topographic survey should additional survey become necessary to complete the hydraulic modeling.

*Product:* IDNR-OWR Floodplain/Floodway Application & Permit  
*Lump Sum Fee:* \$11,200

#### **Task 5. Engineer (CBBEL) Plan Review & Misc. Meetings with AES/Village**

CBBEL will subcontract with AES to complete a review of the 90% Design Plans including all proposed streambank/channel conditions as well as proposed excavation area adjacent to High Hill Dam. This task will include a review of calculated velocities as determined from the hydraulic modeling performed in Task 5 and follow-up recommendations to determine if the proposed stabilization measures shown in the 90% Plans are appropriate. This task does not include review of plantings or seeding. CBBEL will provide written comments responses to AES for inclusion into the Final Plan documents. CBBEL has assumed two iterations for this process. Additional iterations will be billed under separate contract. CBBEL will also attend miscellaneous meetings with AES/Village to discuss the project. This Task does not include additional permitting tasks not associated with the floodway construction permit covered in Task 5.

*Product:* 90% Plan Review, Comments, and Misc Meetings  
*Lump Sum Fee:* \$3,000

**Total Lump Sum Fee Tasks 1-5:                   \$33,900**



**Billing Information:**

Total amount of contract: **\$33,900**

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

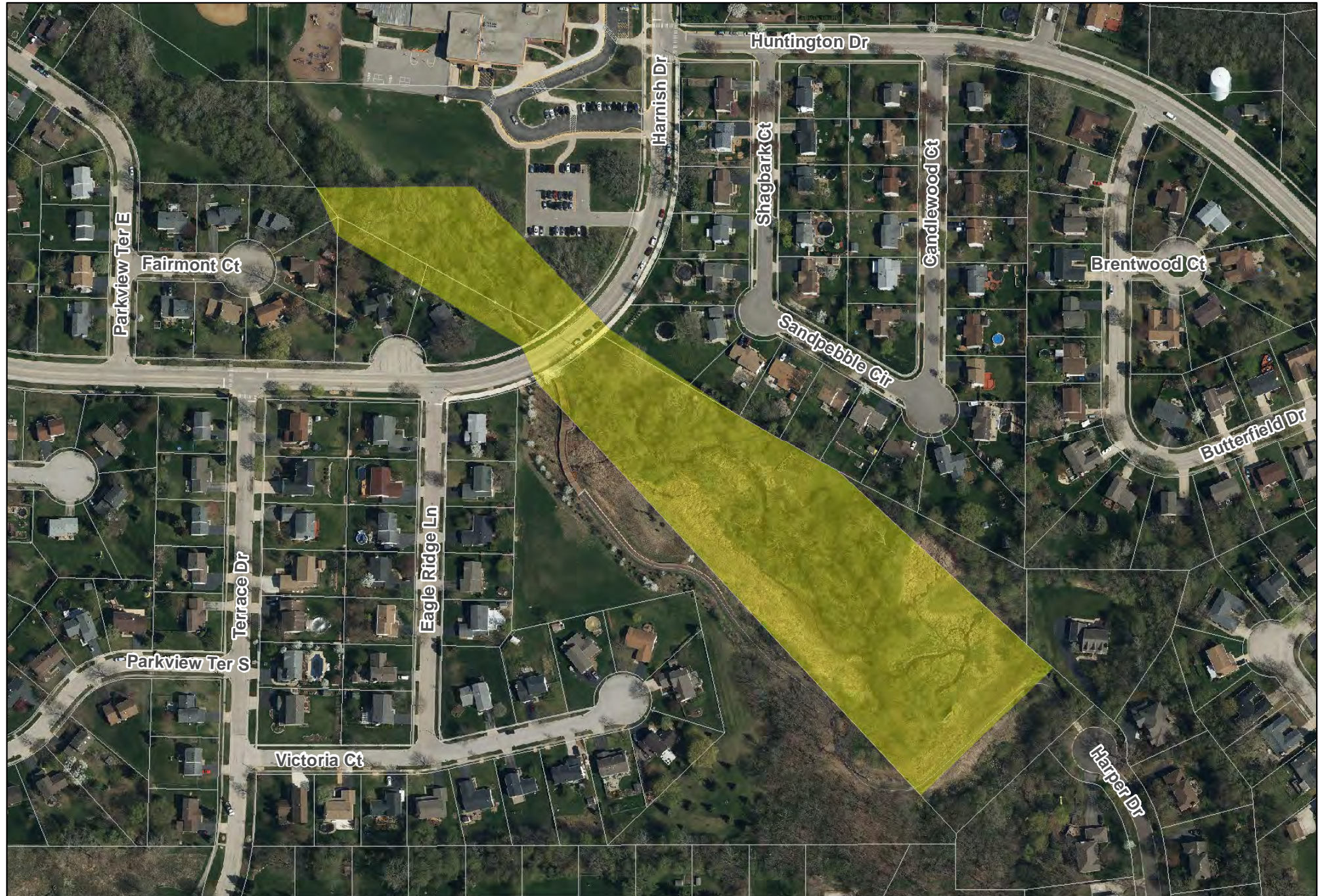
### RATE SCHEDULE

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



# Ratt Creek Reach 5 - 7.4 Acres







VILLAGE OF ALGONQUIN  
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: Thursday, October 04, 2018  
TO: Mr. Robert Mitchard, II  
FROM: Mr. Shawn M. Hurtig  
SUBJECT: *Letter of Recommendation –Inspectional Services*

I have reviewed the received proposals for the Request for Proposals (RFP) on the **Creeks Crossing Park & Drainage Improvements** project in the Village of Algonquin. Please recall that you short listed the RFP to be delivered to the firms shown below. Each proposal was reviewed with an emphasis on each firm's qualifications, expertise, work load, team makeup, and value. With that I have the following comments and recommendation.

In total 2 firms were sent the RFP, they are:

1. HR Green
2. V3

The following 2 firms have responded:

<u>Firm Name</u>	<u>Ecological Sub</u>	<u>Material Sub</u>	<u>Inspector</u>	<u>Price</u>	<u>Attach C</u>	<u>Attach D</u>
HR Green	Applied Ecological	N/A	Justin McKuzes	\$72,475.00	Yes	Yes
V3	In House Staff	Rubino	Rick Kipp	\$44,189.00	Yes	Yes

The following is the inspector decision ranking matrix

<u>Firm</u>	<u>Inspector</u>	<u>Overall Rank</u>	<u>Weighted Rank</u>	<u>Mgmt. Rank</u>	<u>Observ. Rank</u>	<u>Doc Rank</u>	<u>Rank Score</u>
<b>HR Green</b>	Justin McKuzes	45	5	2	2	2	3.5
<b>V3</b>	Rick Kipp	45	5	1	1	1	3.0

Proposal Analysis:

Per the RFP all firms submitted a cost based on the RFP for observation & documentation, as well as management of Material Testing. Utilizing the modified decision matrix the firm that provided the best value was **V3**. This firm listed the top rated inspector and had the lowest cost.

Based on all the above mentioned information it is my recommendation that you consider **V3 Companies** for this project.

Budget Analysis:

The Village budgeted an amount of \$25,000.00 in 06900300-42232. The estimated cost of services of the recommended firm is in the amount of **\$44,189.00**. The difference in the budget amount will be made up within this fund code from the design service line item of Willoughby Farms Park. Willoughby Farms Park was shown to have both Ph. 1 & 2 service completed this year, however only Ph. 1 services are currently scheduled, as such the full \$100,000.00 will not be utilized for that project.

Schedule Analysis:

Inspectional Services Proposal Recommendation to COTW = 10-9-18

Inspectional Service proposal to Full Board = 10-16-18

Notice of Award = 10-18-18

Start of Construction = 10-15-18

End of Construction = 12-21-18

Please confirm this recommendation so that I may prepare the award and contract. Should you have any questions, comments, or concerns, please do not hesitate to contact me.



October 3, 2018

Robert Mitchard II, Director of Public Works  
Village of Algonquin – Public Works Department  
110 Meyer Drive, Algonquin, IL 60102

**Proposal: Creeks Crossing Park & Drainage Improvements | Infrastructure Construction Inspection Services**

Dear Mr. Mitchard,

Thank you for the opportunity to submit our proposal for Creeks Crossing Park & Drainage Improvements – Infrastructure Construction Inspection Services. We understand that being responsive to your project needs, assigning the best technical staff and communicating effectively with the Village and contractor will be critical to the successful completion of this project.

In addition to our extensive experience in construction inspection and ecological management of projects, V3 is very familiar with the Village of Algonquin's construction standards and quality assurance testing procedures. Over the past two years, we have worked successfully with Kane County and the Village of Algonquin to deliver the Longmeadow Parkway corridor improvements from Randall to White Chapel Drive. This experience, which included interaction with the local residents, oversight of the contractor's activities and management of construction of multiple riparian environment wetlands and ponds, makes V3 an excellent representative for your needs.

Our Resident Engineer, Mr. Rick Kipp, has 34 years of varied experience on state, municipal and private projects. His recent involvement with Longmeadow Parkway gives him local knowledge of the existing drainage conditions, traffic patterns, residents' concerns and Westfield School contacts for coordination. He provided Blanding's Turtle recognition training to all contractors working on the Longmeadow project, as well as performing daily inspections in accordance with federal commitments for that project. His experience as a development design engineer provides sound knowledge of detention and storm sewer system infrastructure components. He is a member of APWA and brings LEED accredited knowledge to this open space project. Our Project Ecologist, Dan Jablonski, has 10 years of hands-on experience working in the field of ecological restoration. He has performed all activities related to native area creation and maintenance including chemical and mechanical weed control, native plantings, soil preparations and seeding, select tree clearing and installation of erosion control measures which gives him a unique perspective towards practical solutions, while maintaining the integrity of the project.

Our submittal includes resumes, similar project experience and our project approach and understanding. We look forward to working with the Village and are available immediately to begin work. If you have any questions regarding our qualifications, please feel free to contact me at 630.973.6404 or via email at [mpowers@v3co.com](mailto:mpowers@v3co.com).

Sincerely,  
V3 Companies

Matthew Powers  
Vice President, Director of Construction Engineering



## TABLE OF CONTENTS

<b>Section 1:</b>	<b>PROJECT UNDERSTANDING</b> <ul style="list-style-type: none"><li>▪ <i>Overview</i></li><li>▪ <i>Scope of Improvements</i></li></ul>
<b>Section 2:</b>	<b>PROJECT APPROACH</b> <ul style="list-style-type: none"><li>▪ <i>V3 Team Members</i></li><li>▪ <i>Key Elements</i><ul style="list-style-type: none"><li>▪ A Thorough Schedule</li><li>▪ Work Adjacent to Residents</li><li>▪ Traffic Control</li><li>▪ Endangered Species</li><li>▪ Site Earthwork</li></ul></li></ul>



## Project Understanding

### OVERVIEW

The Village of Algonquin is seeking a qualified Level 1 Project Inspector to perform contract management, full time construction observations and documentation services for the Creeks Crossing Park and Drainage Improvements project. An ecologist capable of performing Level 4 Ecological Inspections to include contract management, part time observation and documentation and bi-annual monitoring inspections for three years, is also required. The consultant will provide materials inspection field and laboratory testing for embankments, sub-grade, aggregates, concrete and HMA placements made on the project. The project is expected to start October 1, 2018 with tree removals, a consultant agreement should be signed by October 22, 2018, with project completion expected by December 21, 2018. Seeding, emergent plugs and tree plantings will occur in the spring of 2019.

### SCOPE OF IMPROVEMENTS

The scope of work will include the clearing, channel shaping and grading of more than 16 acres of open space adjacent to Dixie Creek, between Sleepy Hollow Road and west of Winfield Drive. Removals involve more than 3,500 tree units, HMA pavements, walks and curbs associated with Buchanan Drive, 24-inch storm pipe and manholes, an existing concrete dam, multiple debris jams and channel excavations. More than 3,300 cubic yards of furnished clean fill materials will complete the mass earthwork grading across the project area, which includes filling of two existing water storage basins.

Temporary erosion control measures will include perimeter erosion barriers, ditch checks, tree protection fencing, a stabilized construction entrance off Buchanan Drive and bypass pumping and dewatering of work zones in accordance with an approved in-stream work plan. Permanent stabilization will include placement of more than 600 square yards of rip rap for toe armoring along the creek banks, five select types of seeding, emergent wetland plugs, mulch and planting of 59 deciduous trees.

Proposed improvements will include the construction of two, new 10-foot-wide HMA bike pathways, a new concrete sidewalk along Sleepy Hollow Road, a new segmental concrete block retaining wall with split rail fencing, 12 grade control structures within Dixie Creek and a seat wall bench adjacent to the new pathway. Shared bike path signage will be installed on adjacent residential streets.

As a Waters of the US, this jurisdictional project requires an USACE 404 permit. The contractor must submit an in-stream work plan including temporary bypass pumping while work is performed in and adjacent to the creek. Pond dewatering will be necessary for construction of the retaining wall adjacent to the bike path at the north end of the site. NPDES erosion control monitoring requires weekly inspections, using village forms and coordination with staff at Kane – DuPage Soil & Water Conservation District. The inspector must be familiar with procedures to identify and protect both Blanding's Turtle and the Rusty Patched Bumble Bee.





## Project Approach

### V3 TEAM MEMBERS

V3's team will include Rick Kipp, as the Resident Engineer, providing a full time site presence while the contractor is present. Rick is familiar with the Village of Algonquin staff and construction standards, having managed the Longmeadow Parkway project and working with Shawn Hurtig. Rick brings decades of experience, and has coordinated permits with Kane DuPage Soil & Water Conservation District, as well the IEPA and IDNR. He has performed site inspections for the Blanding's Turtle and educated contractors on siting procedures.

Dan Jablonski, a biologist and certified arborist, will perform as the Project Ecologist to provide part-time inspections and documentation of herbicide applications, seeding and planting items. Dan's experience, both as a contractor, and ecologist managing wetland delineations, plantings and performing monitoring inspections, will suit this project well.

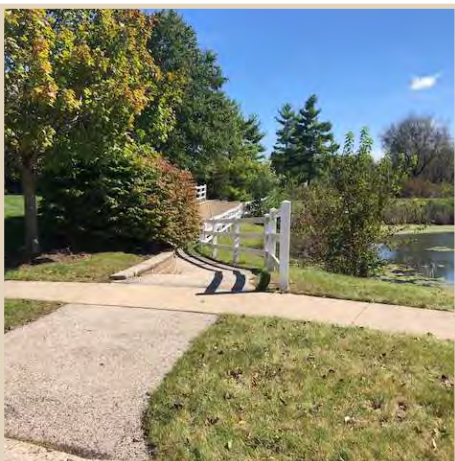
Rubino Engineering will serve as our materials inspection firm. Rick will coordinate site activities to schedule field inspections and ensure that quality assurance requirements are being met. Rubino is familiar with the Village and Kane County requirements, currently serving as the on-call consultant for KDOT. We understand EnCap, Inc. will perform the contracting work outlined in the plans and specifications. Rick and Dan will work closely with their crews to ensure the work elements are properly installed.

### KEY ELEMENTS

Our experience supervising and performing similar types of work help identify several key components that must be addressed to make this project successful:

#### A Thorough Schedule

This environmentally sensitive project requires a well-planned approach to the grading improvements located adjacent to the creek. It will be crucial to confirm work elements are well coordinated, and allow for timely placements of materials without the need for winter protection measures. Subgrade improvements and work below grade must be completed prior to frost. This will require removals and grading of certain areas to be complete in advance of other, less time sensitive elements. Rick will look for efficiencies and discuss the schedule with the Village's Project Manager. Priorities can be established, and coordination with both the ecologist, and the materials testing agency can occur in timely fashion.





## Work Adjacent to Residents

Rick is quite familiar with the residents in the immediate area. Although this project is not associated with the Longmeadow corridor, expectations will be high, and workers will be present directly behind residents' homes. Although allowable work hours are 7 AM to 8 PM, noise from machines and the tree removal operations must be kept manageable, and dirt associated with earth operations must not be allowed on adjacent residential streets. V3 will manage this concern first by addressing expectations at the preconstruction meeting, then following up at each progress meeting. Understanding work plans in advance will help coordinate timelines, and identify concerns, that can be discussed prior to implementation. The contractor must respect the homeowner's private property. V3 will reach out and establish a point of contact with those adjacent stakeholders.



## Traffic Control

Work will occur during the school season, adjacent to Westfield School. Trucks will be entering and leaving the site continuously, especially with the import of 3,300 cubic yards of materials. It may be advantageous to enter the site from Sleepy Hollow Road, just north of Dixie Creek, at the existing field entrance, to perform some of the work tasks and minimize traffic disturbances to Foster Circle and those residents. Any lane closure on Sleepy Hollow Road must be thoroughly vetted with the village.

## Endangered Species

Understanding Blanding's Turtle habitat, identity and the process to notify IDNR was thoroughly exercised by V3 during the Longmeadow project. Daily inspection sheets were utilized for documentation. Educational sessions with identity cards were held with each contractor performing work along the Sleepy Hollow Road corridor. Dan will assist in inspecting for the Rusty Patched Bumble Bee habitat, a critical issue on the Longmeadow Parkway project. With the riparian environment of Dixie Creek being disturbed, protection of existing species of animals and their habitat will be important.



## Site Grading and Earthwork

Not only will heavy equipment be working adjacent to the creek banks, but also filling and reshaping substantial portions of the site north of the creek. Dust control, tree protection, and channel protection will be crucial during daily inspections, and require continual communication with the Contractor. Isolated creek crossings for equipment access and rock placements will be coordinated to be located at the proposed riffle and step pool sites. Clean fill imports should be carefully managed, to avoid undo impacts to natural areas. Staging of materials and equipment must not impact adjacent residents.



## TERMS & CONDITIONS

V3 has reviewed the documents included in the request for proposals dated September 20<sup>th</sup>, 2018 and we have no exceptions to the Terms & Conditions of doing business with the Village of Algonquin.



# VILLAGE OF ALGONQUIN

## REQUEST FOR PROPOSAL

### Creeks Crossing Park & Drainage Improvements

#### Proposal Task Items

<u>Task #</u>	<u>DESCRIPTION</u>	<u>UNIT OF MEASURE</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1A	Civil Construction Contract Management	LUMP	1	\$1,000.00	\$1,000.00
1B	Project Observation & Meetings	LUMP	1	\$35,000.00	\$30,000.00
1C	Project Documentation	LUMP	1	\$2,000.00	\$2,000.00
3B	Material Testing (Field & Lab)	LUMP	1	\$5,000.00	\$5,189.00
4A	Ecological Construction Contract Management	LUMP	1	\$1,000.00	\$1,000.00
4B	<b>Ecological Observation</b>	LUMP	1	\$4,000.00	\$4,000.00
4C	<b>Ecological Documentation</b>	LUMP	1	\$1,000.00	\$1,000.00
***	<b>LEVEL 1 SUBTOTAL</b>				\$33,000.00
***	<b>LEVEL 3 TASK SUBTOTAL</b>				\$5,189.00
***	<b>LEVEL 4 TASK SUBTOTAL</b>				\$6,000.00
****	<b>GRAND TOTAL</b>	<b>NTE</b>			\$44,189.00

Company: V3

Signature:  Date: October 2, 2018

Print: Matthew Powers, P.E.

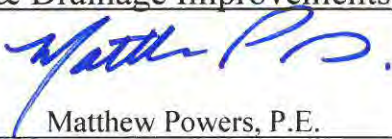
Title: Director of Construction Engineering



# VILLAGE OF ALGONQUIN

## Attachment C

### NON-COLLUSION CERTIFICATION Creeks Crossing Park & Drainage Improvements

By Submission of this proposal, the Respondent  Matthew Powers, P.E. certifies,  
Name of Respondent

That he is Director of Construction Engineering of V3 Companies and,  
Title Name of Firm

under penalty of perjury, affirms:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Respondent or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to opening, directly or indirectly, to any other Respondent or to any competitor; and
3. No attempt has been made or will be made by the Respondent to induce any other person, partnership or corporation to submit or not submit a proposal for the purpose of restricting competition.
4. The proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation.
5. Each person signing the proposal certifies that:

(A) - (S)he is the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal and that he has not participated and will not participate in any action contrary to (1-4] above;

**Or**

(B) - (S)he is not the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to (1-4) above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to (1-4) above.

# VILLAGE OF ALGONQUIN

## Attachment D

### NON-CONFLICT OF INTEREST STATEMENT

#### Creeks Crossing Park & Drainage Improvements

I certify that neither I nor any member of my immediate family has a material personal or financial relationship with any Respondent, or to a direct competitor of any Respondent under consideration by this proposal evaluation committee. I further certify that no other relationship, bias or ethical conflict exists which will prevent me from evaluating any proposal solely on its merits and in accordance with the Request for Proposal's evaluation criteria.

Furthermore, I agree to notify the Village of Algonquin if my personal or financial relationship with one of the Respondent is altered at any time during the evaluation process. If I am serving as the Procurement Officer of record I agree to advise my supervisor of any changes that could appear to represent a conflict of interest.

Name: Matthew Powers, P.E  
(Print)

  
(Signature)

Title: Director of Construction Engineering

Date: October 2, 3018

Department/Agency V3 Companies