



# CITY OF WOOD DALE

## **PUBLIC NOTICE**

IN ACCORDANCE WITH THE STATUTES OF THE STATE OF ILLINOIS AND THE ORDINANCES OF THE CITY OF WOOD DALE, NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL WILL CONTINUE ITS REGULAR STANDING COMMITTEE MEETINGS AT 7:30 PM ON THURSDAY, AUGUST 12, 2021, IN THE COUNCIL CHAMBERS OF THE CITY HALL, 404 NORTH WOOD DALE ROAD, WOOD DALE, ILLINOIS, FOR THE PURPOSES SET FORTH IN THE FOLLOWING AGENDAS:

### **RESVISED AGENDA STANDING COMMITTEES OF THE CITY OF WOOD DALE, ILLINOIS AUGUST 12, 2021**

- I. PLANNING, ZONING & BUILDING COMMITTEE**
  - A. Call to Order
  - B. Roll Call
  - C. Approval of Minutes of Meeting
    - i. July 8, 2021 Planning, Zoning & Building Committee Minutes
  - D. Report and Recommendation
    - i. Redevelopment Agreement (RDA) for 372 N. Wood Dale Road – Proposed Multiple Redevelopment (Former SBT)
  - E. Items to be Considered at Future Meetings
    - i. 390 Billboards, September 9, 2021
    - ii. Route 83 Annexation and PUD, October 2021
    - iii. UDO Updates, Fall/Winter
  - F. Adjournment
  
- II. PUBLIC HEALTH, SAFETY, JUDICIARY & ETHICS COMMITTEE**
  - A. Call to Order
  - B. Roll Call
  - C. Approval of Minutes of Meeting
    - i. July 8, 2021, Public Health, Safety, Judiciary & Ethics Committee Minutes

- D. Report and Recommendation
  - i. Approval of an Agreement with CTS Group for the Police Department HVAC Repair and Replacement in an Amount Not to Exceed \$484,744
  - ii. A Request for additional Class A Liquor License
- E. Items to be Considered at Future Meetings
  - i. PD Space Needs Design - Fall
- F. Adjournment

### **III. PUBLIC WORKS COMMITTEE**

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes of Meeting
  - i. July 8, 2021, Public Works Committee Minutes
- D. Report and Recommendation
  - i. Approval of an Agreement between the City of Wood Dale and Schroeder Asphalt Services, Inc. for the FY 2022 Pavement Patching Program in an Amount Not to Exceed \$96,675
  - ii. Approval of an Agreement between the City of Wood Dale and Sewertech, LLC for the FY 2022-23 Sewer Cleaning and TV Program in an Amount Not to Exceed \$59,622.70
  - iii. Approval of an Agreement between the City of Wood Dale and Robinson Engineering for the FY 2022 Management of the Industrial Pretreatment Program in a Not-to-Exceed Amount of \$100,000
  - iv. Approval of an Agreement with Fer-Pal Construction USA, LLC for Roy Drive Water Main Lining in an Amount Not to Exceed \$49,200
- E. Items to be Considered at Future Meetings
  - i. Street Light Policy Revision, September 9, 2021
  - ii. Irmes Street Light Installation, September 9, 2021
- F. Adjournment

### **IV. FINANCE & ADMINISTRATION COMMITTEE**

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes of Meeting
  - i. July 8, 2021 Finance & Administration Committee Minutes
- D. Report and Recommendation

- i. Renewal of an Economic Incentive Agreement (EIA) with Patterson Dental Supply, Inc.
- E. Items to be Considered at Future Meetings
  - i. Closeout of SSA #11, September 9, 2021
  - ii. Investment Policy, TBD
- F. Adjournment

**POSTED IN CITY HALL ON AUGUST 10, 2021, AT 4:00 PM**

LYNN CURIALE, CITY CLERK

BY: MAURA MONTALVO, DEPUTY CITY CLERK



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## **PLANNING ZONING & BUILDING COMMITTEE MINUTES**

Committee Date: July 8, 2021  
Present: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino,  
Susmarski & Woods  
Absent: None  
Also Present: Mayor Pulice, Treasurer Porch, Clerk Curiale, Police Chief Vesta,  
B. Wilson, E. Cage, A. Lange  
Meeting Convened at: 7:31 p.m.

### **APPROVAL OF MINUTES:**

Ald. Susmarski made a motion, seconded by Ald. Jakab, to approve the Minutes of the June 10, 2021 meeting as presented. A roll call vote was taken with all members voting aye; motion carried.

### **REPORT & RECOMMENDATION:**

APPROVAL OF VARIANCE FOR SIX-FOOT HIGH FENCE IN A CORNER SIDE YARD LOCATED AT 524 EDGEWOOD AVE, CELESTINE SALAZAR, CASE NO. CDC-2021-10

### **DISCUSSION:**

Director Cage provided a brief summary of the case which went to public hearing with CDC. The surrounding area is zoned R3 Single Family. CDC approved since it is consistent with the UDO and the City's Comprehensive Plan. The CDC included two proposed conditions: 1) on north elevation 6' feet can't extend the past wall of the primary structure and 2) that the property be maintained in code compliance including but not limited to parking of vehicles only on approved services. Director Cage couldn't recall approving a 6' feet fence all the way to the sidewalk in the six years he has been with the City. Ald. Catalano inquired about the pool having a fence. Director Cage confirmed it is an above-ground pool with the required fencing and lockable gate so it meets the life safety part of the Code.

Ald. Messina asked what the financial hardship is for the applicant other than paying the fee. Director Cage stated that hardship is somewhat subjective, but that this being a corner lot with a pool in side yard makes it somewhat unique. Also, there is no sidewalk along Foster which is a fairly high traffic road.

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Ald. Jakab reported that some neighbors have already expressed concerns about people parking on the lawn. Director Cage pointed out that parking on grass is a code violation which would be handled by staff if it becomes an issue.

Ald. Woods inquired about the purpose of the double gate and if it is even feasible off of Foster. Director Cage responded that he will look into this.

**VOTE:**

Ald. Messina made a motion, seconded by Ald. Curiale, to approve a Variance for a Six-Foot High Fence in a corner side yard, bringing the entire rear fence in 15' feet and abiding by the Committee's recommendation to end it at the rear of the building. A roll call vote was taken with the following results:

|            |   |
|------------|---|
| Ayes:      | Ald. Ames, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods |
| Nays:      | Ald. Catalano   |
| Abstained: | None  |
| Motion:    | Carried   |

**REPORT & RECOMMENDATION:**

APPROVAL OF VARIANCE TO REDUCE A DETACHED GARAGE SETBACK FROM 5 FEET TO 4 FEET 8 INCHES LOCATED AT 569 GILBERT DR – TURKAN OZTURK – CASE NO. VAR-2021-0002

**DISCUSSION:**

Director Cage gave a brief presentation on what is being requested. Staff is recommending denial since there is no original permit, a stop work order was placed on the property, it went to adjudication and was fined, and it is an almost 2 year process to date and denial is consistent with CDC's recommendation. Director Cage noted that the remainder of the garage is in full compliance and the only issue is with the setback. Ald. Catalano asked if this variance would impact flooding. Director Cage stated the City engineer has reviewed and sees no issues. Ald. Woods asked if a set of stairs can be allowed in the garage if requested in the future. Director Cage stated the UDO amendments will be discussed next week along with what is allowed within a garage structure. Stairs can be added, but the upper area of the garage is for storage only.

**VOTE:**

Ald. Jakab made a motion, seconded by Ald. Catalano, to approve the Variance for a garage setback to 4'8" with the condition that all outstanding fines and penalties are paid to date, and that there are not outstanding issues with any other permits on that garage.

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Ayes: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski  
Nays: Ald. Woods  
Abstained: None  
Motion: Carried

**REPORT & RECOMMENDATION:**

APPROVAL OF SPECIAL USE PERMIT AND MAJOR SITE PLAN REVIEW FOR LEGACY TILE FLOORING DISTRIBUTORS, LLC, 1450 N WOOD DALE RD., CASE NO. SPU-2021-0002

**DISCUSSION:**

Director Cage stated that the building used to be Southland Flooring and been vacant and on the market for few years. It has limited use, and is zoned C2 commercial. This is consistent with the City's Comprehensive Plan and the UDO and meets Special Use standard and site plan review standards. The CDC did recommend approval.

**VOTE:**

Ald. Woods made a motion, seconded by Ald. Susmarski, to approve a Special Use Permit and Major Site Plan Review for Legacy Tile Flooring Distributors, LLC, 1450 N. Wood Dale Road. A roll call vote was taken with the following results:

Ayes: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Nays: None  
Abstained: None  
Motion: Carried

**ITEMS TO BE CONSIDERED AT FUTURE MEETINGS:**

- SBT Bank Lot Development – Summer
- Route 390 Billboard – Summer
- Route 83 Industrial Development – August/September

**ADJOURNMENT:**

Ald. Sorrentino made a motion to adjourn at 8:35 p.m., seconded by Ald. Ames. A roll call vote was taken with all members voting aye. Motion carried.

*Minutes taken by Eileen Schultz*



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: 372 N. Wood Dale Road (Former SBT)  
Redevelopment Agreement  
Staff Contact: Ed Cage, AICP, CD Director  
Department: Community Development Department

**TITLE:** Redevelopment Agreement (RDA) for 372 N. Wood Dale Road – Proposed Multiple Redevelopment (Former SBT)

### **RECOMMENDATION:**

Staff recommends entering into a Redevelopment Agreement with The Lynmark Group for the redevelopment of 372 N. Wood Dale Road, subject to City Attorney review and final approval.

### **BACKGROUND:**

As you will recall, the applicant – The Lynmark Group, presented a redevelopment plan earlier this year for the development of the City owned property, located at 372 N. Wood Dale Road.

### **ANALYSIS:**

The attached RDA sets up the mechanics for the sale and redevelopment of the former SBT bank site next door to City Hall. Some highlights of the project and agreement are as follows:

1. The proposed redevelopment includes approximately 230 apartment units and is a 4-story tall structure.
2. To address any concerns with on-site parking, a parking structure has been proposed to be constructed by the applicant.
3. The City has requested that additional parking be added by the applicant for special events, such as concerts in the adjacent park off Commercial Street.
4. The applicant has proposed to purchase the subject property from the City for \$1.2million, which is a higher amount than the purchase amount paid by the City.

5. The TIF requested incentive to redevelop the property is roughly \$6.5million which will come directly from the TIF and not from the residents via taxes.
6. The proposed plan, layout and cost is a significant upgrade over the last redevelopment proposal, which the City ultimately approved, but developer did not follow through on.
7. The applicant has submitted a timetable that highlights a ground-breaking around this time next year, after all land entitlements and approvals have been achieved.

There are a number of blanks and/or highlighted areas throughout the document. Those are items that either need to still be finalized with the developer, or need to be created such as certain Ordinances related to the project itself.

**DOCUMENTS ATTACHED**

- ✓ Draft RDA – 372 N. Wood Dale Road



## REDEVELOPMENT AGREEMENT

This Redevelopment Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, (collectively, “**Agreement**”) is made and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”) by and between the City of Wood Dale, an Illinois municipal corporation (the “**City**”), and Wood Dale Residential Development LLC, an Illinois limited liability company<sup>i</sup> (“**Developer**”). The City and Developer may, for convenience purposes only, be hereinafter referred to as the “**Parties**” or each individually as a “**Party**.”

### R E C I T A L S

1. The City has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the City and its inhabitants, to prevent the spread of and eradicate blight, to encourage private development in order to enhance the local tax base, to increase employment and to enter into contractual agreements with third parties for the purpose of achieving the above mentioned goals.

2. The City specifically has the authority under the provisions of the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1, *et seq.*), as amended (the “**Act**”), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

3. Developer is an Illinois limited liability company in good standing and authorized to do business in the State of Illinois and has represented that it has the necessary resources, expertise, skill and ability to effectuate the commitments and obligations set forth in this Agreement. Developer’s [Articles of Organization] [organizational documents] and Certificate of Good Standing are attached hereto and incorporated herein as **Exhibit 1**.<sup>ii</sup>

4. The City is the owner of certain real property commonly known as 372 N. Wood Dale Road, Wood Dale, DuPage County, IL, represented by the following property index number: 03-09-413-044 and is legally described in **Exhibit 2**, attached hereto (the “**Property**”).

5. The Property consists of 4.37 acres and is improved with a vacant one-story bank and office building with site improvements, such that the Property has not been contributing, to an extent that is comparable to surrounding improved properties, to the City’s real property tax base or generating sales tax revenue for the City.

6. Pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11 -74.4-1 et seq. (the “**Act**”), in May 2018, the City adopted the [Wood Dale and Commercial] Redevelopment Plan (“**Plan**”) and created the [Wood Dale and Commercial] Redevelopment Project Area (“**Original TIF District**”)<sup>iii</sup> in accordance with the Act. Prior to adopting the Plan, the City held a public hearing and met with representatives of area taxing districts to solicit and obtain comments on the Plan.

7. The Property is located in the Original TIF District, and Developer desires and intends to purchase and redevelop the Property by, among other things, demolishing the structures on the Property to prepare it for redevelopment, after which, subject to the terms and conditions set forth herein, the Developer will build a four-story, approximately 230 unit multi-family rental building with associated parking facilities, all as depicted on the preliminary site plan attached hereto as **Exhibit 3** (the “**Redevelopment Project**” or “**Project**”). The Developer will pay the **Property Purchase Price** (defined below) and the City will convey fee simple title to the Property to the Developer, or its’ assigns, on the **Closing Date** (defined below).

8. The Redevelopment Project shall also consist of landscaping the Property in accordance with the landscaping plan (the “**Landscaping Plan**”), attached hereto and incorporated herein as **Exhibit 4**, and shall be in substantial compliance with the site plan (the “**Site Plan**”), attached hereto and incorporated herein as **Exhibit 3**,<sup>iv</sup> and in substantial compliance with the **Project Timeline** (as defined below), attached hereto and incorporated herein as **Exhibit 6**. The total cost of the Redevelopment Project shall be no less than **(INSERT ESTIMATED PROJECT COST)** \_\_\_\_\_ Million, and No/100 U.S. Dollars (\$XX,000,000.00), as shown on the preliminary project budget (the “**Project Budget**”), attached hereto and incorporated herein as **Exhibit 7**.

9. The Redevelopment Project also consists of Developer taking all steps necessary to prepare the Property to construct the Redevelopment Project, including but not limited to planning, legal entitlements, demolition, site improvement, and remediating environmental conditions as required by applicable law.

10. To stimulate and induce redevelopment pursuant to the Act and to encourage municipal revitalization, after giving all notices and conducting all public hearings required by law, the City (i) approved a new Tax Increment Financing Redevelopment Plan and Project (the “**Redevelopment Plan**”) on or about \_\_\_\_\_, 2021 by adopting Ordinance No. \_\_\_\_\_, (ii) created the new \_\_\_\_\_ **Redevelopment Area** (the “**TIF District**”) on or about \_\_\_\_\_ by adopting Ordinance No. \_\_\_\_\_, and adopted new tax increment financing (“**TIF**”) for the \_\_\_\_\_ Redevelopment Area on or about \_\_\_\_\_ by adopting Ordinance No. \_\_\_\_\_ (collectively, the “**TIF Ordinances**”).

11. The TIF Ordinances, among other things, established the \_\_\_\_\_ Redevelopment Area in accordance with the Act for the area of the City generally bounded on the north by the Institutional/C-1 (Neighborhood Commercial) zoning and development, on the east by Retail/Commercial Town Center zoning and development, on the south by Retail/Commercial Town Center zoning and development, and on the west by open space/recreation zoning and development, and C-1 (Neighborhood Commercial) zoning and development (the “**Redevelopment Area**”).

12. The City has determined that the Redevelopment Area has not generally been subject to growth and the redevelopment of the Property through investment by private enterprise, such as the Redevelopment Project proposed herein, would most likely not occur but for the City offering financial incentives to Developer, as set forth herein.

13. By utilizing TIF from the **Project Incremental Taxes** (as defined below) and in accordance with the Act, the City, subject to the terms and provisions of this Agreement, has agreed to reimburse Developer for certain eligible costs related to the Redevelopment Project as defined in the Act at 65 ILCS 5/11-74.4-3(q), *et seq.* (“**Redevelopment Project Costs**”), and deemed reimbursable under the Redevelopment Plan including, but not limited to, site preparation, demolition and certain environmental remediation,<sup>v</sup> all of which will serve a public purpose and are necessary to foster development within the Redevelopment Area and will assist in encouraging, inducing and stimulating the redevelopment of the Property.

14. The City intends, in reliance on Developer’s commitment set forth in this Agreement, to sell the Property to Developer and provide incentives for the Redevelopment Project payable through the tax increment paid on the Property.

15. Developer has determined that it is not economically feasible to purchase the Property and undertake the Redevelopment Project without a commitment by the City to make available to Developer certain TIF assistance to reimburse Developer for certain Redevelopment Project Costs, which the City has agreed to provide in accordance with the terms and conditions contained herein.

16. Developer intends, in reliance on the City’s commitments set forth in this Agreement, to purchase the Property from the City for the **Property Purchase Price** (defined below) and seek land use entitlements and approvals to facilitate and complete the Redevelopment Project.

17. Upon closing, the Parties shall record the Memorandum of Agreement described in Section X(P) herein. Notwithstanding anything contained in this Agreement to the contrary, this Agreement and the rights and obligations of the Parties hereunder are expressly contingent on Developer closing on the purchase and sale of the Property. In the event Developer does not purchase the Property within thirty (30) days after the **Anticipated Closing Date** (defined below), this Agreement shall automatically be null and void and neither Party shall have any further rights or obligations hereunder, except as specifically set forth herein.<sup>vi</sup>

18. The City has specifically investigated the economic benefits to the City if the Redevelopment Project is approved, and after due investigation and consideration the City has determined that the financial projections with respect to the revenues, income and cash flow to be generated by the Property, if developed in accordance with the Redevelopment Project as set forth herein, demonstrate a benefit to the City and its residents that justify the reimbursement of certain Redevelopment Project Costs in accordance with the provisions of this Agreement.

19. The City, after careful consideration of Developer’s proposed Redevelopment Project, has concluded that the Redevelopment Project will aid the City in: (1) eliminating the blight and/or obsolescence factors and characteristics associated with the Redevelopment Area; (2) facilitating the redevelopment of the Redevelopment Area; (3) improving the environment of the City; (4) increasing economic activity within the City; (5) promoting and achieving the goals of the TIF Ordinances; and (6) producing increased tax revenues for the various taxing districts authorized to levy taxes on the Property. Based on the foregoing, the City has determined that the

Redevelopment Project is in the best interests of the City as it furthers the health, safety and welfare of the City's residents and taxpayers.

20. The City desires to enter into this Agreement solely based upon the expectation that the Redevelopment Project and the Property will not be deemed as exempt from *ad valorem* real estate taxation. The City intends and has an expectation of the receipt of Project Incremental Taxes as a result of the Redevelopment Project.<sup>vii</sup>

21. Developer understands and acknowledges its legal obligation to pay *ad valorem* real estate taxes that shall be levied by the various taxing districts authorized to levy taxes on the Property. Developer's failures to meet its legal obligations and pay such *ad valorem* real estate taxes will result in a lack of property tax increment needed to pay **Developer's Share of Increment** (as defined below), if available, after all **Primary Payments** (as defined below) and **Administrative Expenses** (as defined below) are satisfied.

22. The Parties desire to enter into this Agreement to set forth the rights, duties and obligations of and between the Parties regarding the undertaking and implementation of the Redevelopment Project and desire to establish certain conditions regarding the City's approval of the Redevelopment Project and the City's reimbursement of certain Redevelopment Project Costs from the Project Incremental Taxes.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises and covenants contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## **SECTION I APPLICABLE LAW AND INCORPORATION OF RECITALS**

**A. Applicable Law.** This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois, without giving effect to its principles of conflicts of law or choice of law. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be brought in the state courts of Illinois and situated in DuPage County, Illinois. This Agreement is made pursuant to and in accordance with the provisions of the Constitution of the State of Illinois, the Act, other applicable provisions of the Illinois Compiled Statutes, the DuPage County Code of Ordinances, and the Code of Ordinances of the City of Wood Dale, Illinois (the "**City Code**"). Developer shall construct the Redevelopment Project and satisfy the Operating Covenant (as defined below) in accordance with all applicable federal, state and local laws, including, without limitation, the Act, the City Code and other rules and regulations of the City, and specifically the Illinois Prevailing Wage Act (820 ILCS 130/0.01, *et seq.*) ("**PWA**") (collectively, the "**Laws**").

**B. Recitals.** The representations, covenants and recitations set forth in the preceding paragraphs titled "**Recitals**" evidence the intent of the Parties, are material to this Agreement and are hereby made a part of this Agreement as substantive representations and covenants as though fully set forth herein.

**C. Survival.** Except as specifically set forth herein, all Developer conditions, covenants, recitations, representations, warranties and other obligations pursuant to this Agreement shall be made on the Effective Date and remain current and in full force and effect, and shall run with the Property and shall be binding upon any successor in interest or transferee until the completion of construction of the Redevelopment Project as evidenced by issuance of the Certificate of Completion.

**D. Exclusive Developer.** The City designates the Developer as the exclusive developer for the Project on the Property, subject to the terms of this Agreement.

## **SECTION II REPRESENTATIONS AND WARRANTIES**

**A. Representations and Warranties of Developer.** To induce the City to execute this Agreement and perform the obligations of the City hereunder, Developer hereby represents and warrants to the City, as of the Effective Date, as follows:

1. Developer is a duly organized and existing Illinois limited liability company and is in good standing under the Laws of the State of Illinois. Developer is qualified to do business in the State of Illinois, authorized to conduct its business as it is presently being conducted, is not in violation of any provision of its organizational documents or operating agreement and has the power and authority to enter into this Agreement.

2. The execution, delivery and performance by Developer of this Agreement does not constitute and will not, upon giving of notice or lapse of time or both, constitute a breach or default under any other agreement to which Developer is a party or by which it may be bound under.

3. The individual(s) executing this Agreement on behalf of Developer have the authority to bind Developer and have been duly authorized to enter into, execute and deliver this Agreement and perform the terms and obligations contained herein.

4. This Agreement has been duly and properly executed by Developer, and it constitutes the valid and legally binding obligations of Developer enforceable against Developer in accordance with its terms, except to such extent that enforceability may be limited by any bankruptcy or insolvency Laws affecting the enforcement of creditors' rights and by the exercise of judicial discretion in accordance with general equitable principles.

5. The Redevelopment Project requires economic assistance from the City in order to complete the same substantially in accordance with the Project Budget, and but for the economic assistance to be given by the City, the Redevelopment Project as contemplated would not be economically viable.

6. The Redevelopment Project shall be constructed and fully completed based

on the Project Budget and Developer shall not make any material cost reduction without the prior written approval of the City.

7. To the best of its knowledge, the Developer is in compliance with all Laws to which it is subject, the failure to comply with which could materially and adversely affect the ability of Developer to perform its obligations under this Agreement or otherwise carry out or complete the Redevelopment Project. Furthermore, Developer shall comply with all applicable Laws, rules and regulations of the City, County of DuPage, State of Illinois and the United States of America and all agencies and subdivisions thereof applicable to the Redevelopment Project under this Agreement, and shall cause its contractors, subcontractors, agents and assigns to do the same.<sup>viii</sup>

8. Developer will obtain, or will cause to be obtained, as and when necessary, all licenses, permits, franchises, certifications and approvals that are or will be required under applicable Laws and regulations by any governmental body or officer so that Developer can carry out the Redevelopment Project and complete its obligations under this Agreement. To the best of Developer's knowledge, no consent, approval or authorization of or filing, registration or qualification with any governmental authority that has not been obtained is required on the part of Developer as a condition to the execution and delivery of this Agreement.<sup>ix</sup>

9. There are no proceedings pending or, to the knowledge of Developer or any of its members, threatened against or affecting Developer in any court or before any governmental authority, arbitration Council or tribunal that, if adversely determined, would materially and adversely affect the ability of Developer to perform its obligations hereunder.

10. To the knowledge of Developer, no event has occurred, and no condition exists that upon execution of this Agreement would constitute an Event of Default (as defined below). Developer is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation could materially and adversely affect the financial or legal condition of Developer or the ability of Developer to perform its obligations under this Agreement.

11. The financial information and other written data submitted by Developer or to be submitted by Developer to the City are true and correct in all material respects as of the dates of such statements and data. There have been no material adverse changes in the business, operations, ownership or condition (whether financial or legal) of Developer as disclosed in such statements and data, and Developer has no knowledge of any liabilities, contingent or other, of Developer that might have a material adverse effect upon its ability to perform its obligations under this Agreement, except as disclosed in writing to the City. To the knowledge of Developer, Developer has good, sufficient and legal title to all properties and assets not disposed of in the ordinary course of business since the date of such statements and data. In the reasonable opinion of Developer, Developer has the financial wherewithal to perform its obligation under this Agreement.

12. Any financial projections provided to the City in writing by Developer are the same in all material respects as the financial projections provided by Developer to any and all providers of private financing.

13. Developer reasonably expects that after the execution of this Agreement, the implementation of the Redevelopment Project will proceed to completion in accordance with all Laws.

14. Developer is not barred from entering into this Agreement as a result of violations of either 5/33E-3 or 5/33E-4 of the Illinois Criminal Code of 1961 (720 ILCS 5/33E-3; 5/33E-4), Developer will comply with 775 ILCS 5/2-105(A) of the Illinois Human Rights Act, the Illinois Drug Free Workplace Act (30 ILCS 580/1, *et seq.*) and the PWA.

15. Developer has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of all or part of its assets, suffered the attachment or other judicial seizure of all or part of its assets, admitted its inability to pay debts as they come due or made an offer of settlement, or extension or composition to its creditors generally.

**B. Representations and Warranties of the City.**<sup>x</sup> To induce Developer to execute this Agreement and perform the obligations of Developer hereunder, the City hereby represents and warrants to Developer, as of the date of this Agreement, as follows:

1. The City has the authority as a home rule municipality located in Illinois to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement is a valid and binding obligation of the City, enforceable against the City in accordance with its terms.

2. The execution, delivery and performance by the City of this Agreement does not constitute and will not, upon giving of notice or lapse of time or both, constitute a breach or default under any other agreement to which the City is a party or may be bound.

3. To the best of the City's knowledge, there are no proceedings pending or threatened against or affecting the City, the Property or the Redevelopment Project in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement.

4. The City has not authorized, pledged or contractually agreed to pay the Project Incremental Taxes to any other person, party or entity; as such, there is no prior or superior pledge or assignment of the Project Incremental Taxes to the pledge and assignment thereof to the Developer in this Agreement.<sup>xi</sup>

**C. Acknowledgements.** Developer acknowledges that it is undertaking the Redevelopment Project based solely upon Developer's independent due diligence of the Property, the City, and the viability of the Redevelopment Project. Developer specifically acknowledges that the City has not provided to Developer or Developer's directors, officers, managers, members, employees, consultants, attorneys, accountants or other agents or contractors:

i. any information or advice regarding the imposition of federal, state, county or local tax levies or liabilities or the application of the enforcement of this Agreement on the imposition of federal, state, county or local tax levies or liabilities upon which it should rely upon in making its determination to proceed with the Redevelopment Project; and

ii. any information or advice regarding Developer undertaking the proposed Redevelopment Project at the Property upon which Developer should rely in making its determination to proceed with the Redevelopment Project.

**D. Additional Representations and Acknowledgments.** The Parties acknowledge that, except as otherwise set forth in this Agreement, the City shall have no obligation to pay any entity or person other than Developer as holder of the **City Note** (defined below) and Developer's permitted successors and assigns of the City Note. The City shall not be obligated to make direct payments to any other entity, construction manager, general contractor, contractor, subcontractor, mechanic, materialman, person or entity providing services or materials to the Redevelopment Project. The Parties agree that the **Developer Sub-Account** (as defined below) shall be the sole intended source of reimbursement to Developer for its Redevelopment Project Costs, and that the City's reimbursement obligation shall be satisfied by payments under the City Note.

**E. Survival of Representations and Warranties.** The Parties agree that all of their representations and warranties set forth in this Agreement are true as of the Effective Date of this Agreement and each Party agrees that it shall provide prompt written notice to the other Party in the event the representations and warranties set forth herein materially change for any reason. Developer's representations and warranties shall terminate upon the completion of construction of the Redevelopment Project as evidenced by issuance of the Certificate of Completion.

### **SECTION III DEVELOPER'S INCENTIVE; ACKNOWLEDGEMENTS**

**A. Tax Increment Financing: But For; Acknowledgements; Satisfaction; Total Reimbursement Amount.**

1. **But For Standard.** The Parties acknowledge that "but for" the City agreeing to incentivize and reimburse Developer to and for the completion of the Redevelopment Project, the Redevelopment Project would not take place and the blight complained of at the Property would not be eradicated.

2. **Conditions Precedent.** The Parties further acknowledge and agree that the



obligation of the City to reimburse the Developer for Redevelopment Project Costs is wholly predicated on and contingent upon: (i) Development closing on the purchase of the Property and paying the Purchase Price; (ii) Developer complying with the material conditions, covenants and terms of this Agreement; (iii) Developer securing and maintaining all governmental approvals required for its development of the Project; (iv) there being available sums in the Developer Sub-Account (as defined below) to make any requested payments (provided that if there are no funds available in the Developer Sub-Account, the reimbursement obligation shall not be extinguished but shall accrue and shall be paid when sums are available in the Development Sub-Account); and (v) no judicial, legislative or executive act having prohibited or limited Developer from recovering reimbursement payments (collectively, the “**Conditions Precedent to Payment**”).

**3. Total Reimbursement Amount.** “**Developer’s Total Reimbursement Amount**” shall mean the lesser of (i) a principal amount of Six Million Five Hundred Thousand and No/100 U.S. Dollars (\$6,500,000.00) plus all interest accrued thereon, or (ii) (as applicable) Redevelopment Project Costs actually paid by Developer, either directly or indirectly through any single-purpose entity affiliate created by Developer to own the Redevelopment Project. The Project Timeline (as defined below) shall enumerate each phase of the Redevelopment Project and the completion of each phase of the Redevelopment Project as a percentage in relation to the completion of the whole Redevelopment Project.

**B. Termination Date.** Developer shall be prohibited from receiving reimbursement payments of Developer’s Share (as defined below), in addition to other prohibitions set forth in this Agreement, after the occurrence of the earlier of the following (as applicable, the “**Termination Date**”): (1) 11:59 P.M. on December 31st of the calendar year during which **Project Incremental Taxes** (as defined below) levied during the twentieth (20<sup>th</sup>) year after the Effective Date; or (2) the City having paid Developer the Developer’s Total Reimbursement Amount; or (3) the expiration of the term of the TIF District under the Act and establishing ordinance, including any extension of the term of the TIF District in accordance with the Act, or (4) upon cancellation of Developer’s right to reimbursement should it relocate the multi-family residential facilities in the approved Redevelopment Project in violation of this Agreement as provided in Section 5/11-74.4-8b of the Act.

**C. Special Tax Allocation Fund; Developer Sub-Account.** The City shall take all reasonable steps and cooperate with DuPage County, Illinois (the “**County**”) to establish a special tax allocation fund (the “**STAF**”). The City shall also take all reasonable steps to establish, as a sub-account of the STAF, the “**Developer Sub-Account.**” The City shall commence all reasonable steps to cooperate with the County to establish the STAF and the Developer Sub-Account no later than sixty (60) days after the Effective Date, but subject to reasonable extension due to circumstances out of the City’s control. The City agrees that the STAF and the Developer Sub-Account will be established in accordance with the Act. The failure of the County to establish the STAF or Developer Sub-Account shall not be considered a Default (as defined below) of the City; provided, however, Developer shall have the right to terminate this Agreement in the event the County does not establish the STAF or Developer Sub-Account, the City shall cooperate in recording a release of the Memorandum and neither party shall have any further rights or

obligations hereunder, except as specifically set forth herein. The City shall take all reasonable steps to ensure that the County pays all Project Incremental Taxes into the STAF.<sup>xii</sup>

**D. Project Incremental Taxes; the Developer's Share of Increment; the City's Share of Increment; Distribution into Sub-Account.**

**1. Project Incremental Taxes; Definitions.** "Project Incremental Taxes" shall mean one hundred percent (100%) of the *ad valorem* real estate taxes levied on the Property, collected by the County, and paid to the City pursuant to the TIF Ordinances and Section 11-74.4-8(b)<sup>xiii</sup> of the Act. Project Incremental Taxes are allocated as follows: "Primary Payments" (as defined below), the "Annual Administrative Expenses" (as defined below), "Developer's Share of Increment" (or the "Developer's Share") and the "City's Share of Increment" (or the "City's Share").<sup>xiv</sup> The **Primary Payments** shall be the **Annual School District Payment** together with the **Annual Library Payment**. The "Annual School District Payment" shall mean the annual payments to the local school district(s) as required by the Act for each school district's increased costs attributable to the Project, which payment will generally be based on the net increase in new students who reside in the Project and attend the local public schools during the applicable year multiplied by the per capita tuition cost, subject to adjustment as provided in the Act. The "Annual Library Payment" shall mean the annual payments to the public library district as required by the Act for the library district's increased costs attributable to the Project, as measured by the net increase in the number of persons eligible to obtain a library card in the district who reside in the Project multiplied by the per patron cost of providing library services (not to exceed \$120). The Annual Library Payment shall not exceed 2% of the Project Incremental Taxes, subject to the Act. As set forth below, the distribution of the Project Incremental Taxes is limited by the provisions of laws that statutorily condition the reimbursement of Project Incremental Taxes and this Agreement. The "Annual Administrative Expenses," shall mean reasonable administrative expenses of the City of not more than Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) annually. Reasonable administrative expenses shall include expenses utilized by the City for the following purposes: (i) the balance utilized by the City for the administration of the Project Area TIF Fund;<sup>xv</sup> and (ii) such other costs and expenses as permitted by Law or deemed useful by the City for annual administration of the Redevelopment Project. The **City's Share** shall be the flat amount of \$(250,000??), representing a reasonable estimate of the City's out-of-pocket costs incurred in connection with this Agreement including, but not limited to, the expenses incurred from the use of the City's financial and legal advisors, environmental consultants, economic development consultants, City engineers and such other professionals and advisors retained by the City. "Residual Increment" shall mean the Project Incremental Taxes remaining, if any, after payment of the Primary Payments, the Annual Administrative Expenses, and the City's Share. The "Developer's Share" shall mean the Residual Increment available prior to the Termination Date and provided Developer has satisfied all Conditions Precedent to Payment and is not in Default beyond any applicable notice and cure period.

**2. Order of Payments.** Project Incremental Taxes shall be distributed in the following order: (i) first, to fund the Primary Payments, if any; (ii) then, second, if

available, to pay the Annual Administrative Expenses; (iii) then, third, if available, to the City's Share; (iv) then, fourth, to the extent Residual Increment is available and prior to the Termination Date, to accrued interest that is due and payable on the City Note; (v) then fifth, to the Developer's Share; (vi) then sixth, to the extent Residual Increment is available after payment of the Developer's Share to the City.

**3. Internal Transfer of the Developer's Share.** During each calendar year prior to the Termination Date and prior to Developer receiving the Project Incremental Taxes, on the later of October 1 or a date no later than ten (10) days after the City receives from the County an amount of incremental taxes in excess of ninety percent (90%)<sup>xvi</sup> of the levied taxes attributable to the Property (the "**Transfer Date**"), provided Developer is not in default of this Agreement, the City shall allocate, credit, deposit or otherwise transfer a sum equal to the Developer's Share from the STAF to the Developer Sub-Account. The City's Share shall remain in the STAF until otherwise distributed. This covenant shall expire independent of the actions of the Parties subsequent to the Termination Date. In the event of Developer's Default, no such transfer to the Developer Sub-Account shall be made until the Default is cured.

**E. City's Payments to the Developer; Eligible Reimbursement Payment Amount; Determination of Satisfaction; Conditions Precedent to Payment; Request for Reimbursement; Payment; Note; Documentation; Request Made During Default.**

**1. The Developer's Eligible Reimbursement Payment Amount.** The City's payment of Developer's Share as a "**Reimbursement**" to Developer for upfront costs paid shall be made from funds then available in the Developer Sub-Account, after the City approves a Request for Reimbursement (as defined below) and after the payment of the Developer Administrative Payment, in the lesser amount of any of the following: (1) Developer's Share; or (2) the eligible Redevelopment Project Costs as approved by the City in accordance with this Section; or (3) the sum then available in the Developer Sub-Account. The City may rely on submissions made by and notices from Developer on behalf of Developer for all purposes under this Agreement regarding the direction of the payment of Developer's Share of Increment to Developer.

**2. Timeliness of Request; Steps for Review.** Developer shall submit a written request for Reimbursement to the City's Designee (the "**Request for Reimbursement**") within ninety (90) days after the completion of the Redevelopment Project as set forth on the Project Timeline (as defined below). The City shall review the submission, as set forth below and may request additional commercially reasonable documentation in the event more information is needed in the reviewing process. The City shall promptly notify Developer of a rejection in writing, which notice shall include the basis for such rejection in reasonable detail (the "**Reimbursement Deficiency Notice**"). A Request for Reimbursement that does not have a fully completed, executed and notarized original Request for Reimbursement Certificate (as defined below) or is devoid of the Supporting Documentation (as defined below) shall be deemed materially deficient. In the event the City rejects the Request for Reimbursement, Developer shall have the right to cure the deficiencies detailed in the Reimbursement Deficiency Notice as provided for in

Section III.E(4)(i) below.

**3. Contents of a Request for Reimbursement.**

**i. Generally; Certificate.** The Request for Reimbursement minimally shall contain the following: (a) a fully completed, executed and notarized Request for Reimbursement Certificate in substantially the same form as set forth in **Exhibit 8**, attached hereto; [(b) a Developer's Counsel Opinion in substantially the same form as set forth in **Exhibit 9;**]<sup>xvii</sup> (c) a Certificate of Occupancy (as defined below) from the City; and (d) the Supporting Documentation (as defined below).

**ii. Supporting Documentation.** The Supporting Documentation (as defined below) shall include, without limitation, the following: (a) a fully executed certificate or certificates to the City by the (duly licensed) engineering firm for the Redevelopment Project or other individual reasonably approved by the City certifying that the work was completed substantially in accordance with the Site Plan, the Plans and Specifications (as defined below)<sup>xviii</sup> and that the applicable phase of the Redevelopment Project is complete; (b) evidence of the Redevelopment Project Costs(as defined in the Act)<sup>xix</sup> incurred and paid by Developer for the completion of the applicable phase of the Redevelopment Project, which evidence shall include a written summary of the costs and lien waivers and shall include sworn contractor's affidavits, certified payrolls, and paid invoices and a copy of an owner's title policy and deed evidencing the Developer or a single purpose entity wholly owned or controlled by the Developer<sup>xx</sup> as the title holder of the Property; (c) certificate of completion, building permits or other governmental approvals required for the use of the Property after completion of the Redevelopment Project, (d) if requested, pictures or depictions of those items for which reimbursement is being sought; (e) evidence of Developer's compliance with the PWA (including certified payrolls); and (f) such certificates of insurance as are required under this Agreement (collectively, the "**Supporting Documentation**"). The Supporting Documentation shall verify: (a) that each applicable phase of the Redevelopment Project was completed in substantial accordance with the Site Plan, the Plans and Specifications (as defined below), the Project Timeline (as defined below), this Agreement and the Laws; (b) the costs Developer has incurred and paid in connection with the applicable phase of the Redevelopment Project, so as to permit the Parties to establish the total Redevelopment Project Costs related to each phase of the Redevelopment Project that have been paid; and (c) that Developer has complied with the Laws. Developer shall submit reasonably accurate, binding, complete, comprehensive, current, legible and verifiable documents to comprise the Supporting Documentation.

**4. Determination of Satisfaction.** The City or its designee shall in its reasonable discretion determine: (i) if Developer has complied with the Conditions Precedent to Payment; and (ii) if Developer has submitted appropriate documentation in accordance with this section to support and justify the City paying the Reimbursement.

The City's review of the Request for Reimbursement shall be conducted in good faith and as follows:

i. The City, unless otherwise specifically set forth herein, shall have fifteen (15) business days after its receipt of the Request for Reimbursement from Developer to reasonably deny, modify, approve (whether in full or in part) or seek clarification of Developer's Request for Reimbursement or Supporting Documentation. In the event of a denial, partial denial or requested modification of the Request for Reimbursement, the City shall deliver a Reimbursement Deficiency Notice to Developer and Developer shall be permitted to resubmit an updated or modified Request for Reimbursement, and upon Developer's resubmittal to the City, such fifteen (15) business day period and process shall repeat itself until the City has approved the same. The City reserves the right to have the City Attorney, Engineer or other employee(s), independent contractor(s) and/or agent(s) inspect and approve all such documentation to ensure completion of the applicable phase of the Redevelopment Project, to ensure compliance with the City Code and the terms of this Agreement, to confirm that each item submitted for reimbursement is eligible for reimbursement under the Act, to make any and all additional inspections to verify that payment has been made by Developer and to request that Developer provide additional Supplemental Documentation.

ii. In the event that Developer fails to deliver to the City sufficient documentation to approve the Request for Reimbursement or the Developer is then in Default, the City shall have no obligation to issue the Reimbursement to Developer. All other obligations on the part of the City arising pursuant to this Agreement shall be deemed deferred, suspended and without force or effect until such failure or violation is so corrected. If Developer subsequently delivers to the City sufficient documentation to support the issuance of the Reimbursement, the City shall process the resubmission in the same manner as provided in this Section.

**5. Acknowledgement; Payment.** The City or its staff shall present, as applicable, an approved Request for Reimbursement to the City Council (the "City Council") within thirty (30) days following the date of such approval. No later than three (3) business days after the City adjourns the meeting at which the approved Request for Reimbursement is presented to the City Council, the City shall commence payments to Developer provided funds are available pursuant to the provisions of this Agreement and the terms of the City Note. The City shall issue a Certificate of Completion, in recordable form, upon its determination that the Redevelopment Project has been completed.<sup>xxi</sup>

**6. City Contribution; Note.** Subject to the terms of this Agreement, the City agrees to reimburse the Developer its Total Reimbursement Amount, exclusively, as agreed upon in this Agreement (the "City Contribution").

i. **City Note.** Subject to the terms and conditions of this Agreement, City hereby agrees to issue a Developer's Note ("City Note") to the Developer for

Redevelopment Project Costs incurred by Developer on the date the City approves the Certificate of Redevelopment Project Costs for the Redevelopment Project in the form attached as **Exhibit 10**. The City will provide for the delivery of an opinion at Closing as to the enforceability and transferability of the City Note. In the event the Developer obtains, at its sole cost, an opinion from bond counsel reasonably acceptable to the City, confirming that the City Note is tax-exempt in accordance with the Internal Revenue Code, the City shall issue the City Note as a tax-exempt note.<sup>xxii</sup> The principal amount of the City Note shall be in an amount equal to the Developer's Share but in no event shall such principal amount exceed Six Million Five Hundred and No/100 Dollars (\$6,500,000.00). Interest on the City Note shall accrue at the rate of **(Five)** percent (%) from the **Interest Date** (as defined below) and will compound annually. Payments of principal and interest on the Note shall be made only from Available Incremental Taxes.<sup>xxiii</sup> Payments of the City Note are subject to the amount of Available Incremental Taxes being sufficient for such payments. It shall not be considered a Default of this Agreement in the event the Developer cannot obtain an opinion from bond counsel reasonably acceptable to the City, confirming that the City Note is tax-exempt in accordance with the Internal Revenue Code.<sup>xxiv</sup>

**ii. Interest Date.** The Interest Date for the City Note shall be on **(INSERT)**.

**iii. Redemption.** The principal balance of the City Note shall be subject to redemption on any date, collectively or individually and as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed, plus accrued but unpaid interest.

**iv. No Prepayment Penalty.** The City may prepay all or any part of the balance outstanding hereunder at any time without penalty.

**v. Documentation.** The City shall place and keep on file with the office of the City Clerk all documentation received and distributed pursuant to this Section. Any documents normally exempt from disclosure under the Freedom of Information Act (5 ILCS 140/1.1, *et seq.*) shall be kept from general disclosure to the extent permitted by law.<sup>xxv</sup>

**7. Request Made During Default.** Notwithstanding any other provisions of this Agreement, the City shall have no obligation to make any payments of the Reimbursement or issue the City Note if the Developer is in Default of this Agreement. This Section of the Agreement should be read in conjunction with and not exclusive of Section VII of this Agreement.

**F. Other City Assistance.** Except as may be required by the Laws, and provided Developer is not in Default of this Agreement, the City agrees that prior to the Termination Date, or earlier termination of this Agreement, it shall in good faith: (1) consider all of Developer's requests for relief from the Wood Dale Zoning Ordinance

(“**City Zoning Code**”) as may be required to permit the redevelopment of the Property; (2) consider all requests for incentives established and authorized under the Illinois Enterprise Zone Act and City Code provisions regarding the same; (3) aid Developer and to cooperate with Developer in its dealings with any and all applicable governmental bodies, adjacent communities, agencies and utility companies having jurisdiction over the Property in obtaining utility and other governmental services for the Property, which utilities and services may include, without limitation, sanitary sewers and storm water management; (4) grant temporary construction easements upon any portion of the Property or surrounding property that is controlled by the City and requested by Developer in order for Developer’s agents, employees or contractors to complete the Redevelopment Project (but is not obligated to do so); (5) cause all City departments and disciplines responsible for reviewing the Plans and Specifications during the building permit application process, including the Fire Department, to review and issue all comments upon and approvals of the Plans and Specifications, as revised, prior to the issuance of the City’s building permits for the Project so that the Developer may finalize its construction costs prior to closing upon its plan of finance; and (6) provide access during normal business hours upon reasonable notice (at least one business day prior notice) to the site for surveys, assessment of environmental conditions, soil borings, demolition evaluation, utility location and geotechnical reports, among other predevelopment activities. Developer shall, at its sole cost and expense, and to the extent reasonably possible, restore the impacted portion of the City property to the same condition that it was in prior to the commencement of such work and at all times defend, protect and hold harmless the Indemnified Parties (as defined below) from and against potential liabilities stemming from the aforesaid. The Parties agree to cooperate in providing all necessary easements and licenses for water and sewer usage and the installation and modification of utilities. This Section shall not obligate the City to expend additional funds or incur additional expenses in effectuating the terms of this Section. Developer agrees not to apply for relief from the City Zoning Code during a Default of this Agreement.

**G. Conveyance of Property.**

**1.** The “**Property Purchase Price**” or “**Purchase Price**” shall be One Million Two Hundred Thousand Dollars (\$1,200,000) to be paid at Closing, subject to adjustments and prorations as described herein, and subject to the credit for the Earnest Money to be paid by Developer (or its nominee) as described below. The Purchase Price shall be paid by wire transfer of immediately available funds.

**2.** The **Closing Date** shall be within (thirty (30) days of the Anticipated Closing Date, unless agreed otherwise in writing by the Parties. The **Anticipated Closing Date** shall be the date on which Developer closes on its financing for the Project, which shall be no later than 180 days after Final Construction Drawings are approved by the City (as evidenced by the issuance of the Project’s demolition and building permits), unless agreed otherwise in writing by the Parties (the City’s approval to a requested extension shall not be unreasonably withheld, conditioned or delayed, particularly in connection with extension requests necessary to allow the Developer to secure necessary financing in accordance with the Project Budget).

3. Not less than thirty (30) days before the Closing Date, the City, at its sole cost and expense, shall cause to be delivered to Developer (i) an updated title insurance commitment (the "Commitment")<sup>xxvi</sup> issued by Chicago Title Insurance Company, or such other title company acceptable to both Parties (the Title Company) in the amount of the Property Purchase Price, which shall commit the Title Company to issue the Title Policy, with copies of all documents referred to therein which constitute encumbrances on title, and (ii) an ALTA/ ACSM land title survey prepared in accordance with 2021 American Land Title Association and National Society of Professional Surveyors standards (the "Survey").

4. If the Commitment or the Survey discloses defects or exceptions that are objectionable to Developer, then Developer shall notify City (the "Title Notice"), in writing, within 20 business days after the later to occur of receipt of the Commitment and the Survey by the Developer. If Developer so notifies City of such objections, then City shall be allowed a period of 15 business days from the date Developer delivers the Title Notice to provide Developer with assurances satisfactory to Developer that any such objectionable matters will be removed or endorsed over, in form and substance acceptable to Developer, on or before Closing Date, and City shall use commercially reasonable efforts to do so and City shall notify Developer promptly if City determines that City will not be able to do so, it being understood that City may, but shall not be required to, provide such assurances (other than with respect to any mortgage, tax, mechanics, judgment or other lien or encumbrance of a definitive or ascertainable amount, which City shall satisfy and remove prior to Closing). Matters disclosed by the Commitment and the Survey which are not objected to by Developer or which are objected to but which are waived by Developer shall constitute "Permitted Exceptions"; any other matters shall constitute "Unpermitted Exceptions". Failure by Developer to deliver the Title Notice within the time period described above shall constitute an election by Developer to take title to the Property subject to all such matters as are disclosed by the Commitment and the Survey. If City shall not deliver assurances satisfactory to Developer that any such objectionable matters will be so removed or endorsed over within 15 days, then Developer may elect, within 5 days following expiration of the 15-day period prescribed above: (i) to have the Title Company issue its endorsement insuring against damage caused by said objectionable matter and take title as it then is, with the right to deduct from the Purchase Price amounts equal to all liens or encumbrances of a definite or ascertainable amount, or (ii) to extend the time for City to deliver such assurances to Developer (and if Developer elects to so extend the time as described herein, Developer shall have the same rights concerning matters at the end of the extended period as Developer had at the end of the original period). Notwithstanding any other provision in this Agreement and without regard to whether the Developer issues a Title Notice, the City acknowledges that the Developer objects to the exception document recorded on December 7, 2020 as document no. R2020-149274 with the DuPage County Recorder and that the City shall be required to cause the release and removal of such document prior to the Closing Date.

5. Good and marketable, fee simple title to the Property, subject to the Permitted Exceptions, shall be conveyed to Developer, or Developer's nominee, by a



special warranty deed.

**6.** At Closing, City and Developer shall each execute and deliver or cause to be executed and delivered such documents, closing statements, affidavits (including an ALTA Statement, GAP Undertaking provided by the City only or such other form of owner affidavit as is sufficient to cause the Title Company to provide extended coverage), searches, declarations, lien waivers, certificates, indemnities or deposits as shall be customary, necessary or appropriate to complete the transaction and cause the issuance of the Title Policy. At Closing, City shall deliver physical possession of the Property to Developer (or its nominee) in substantially the same condition as exists on the Effective Date of this Agreement, unless otherwise approved by Developer in writing.<sup>xxvii</sup> At Closing, City shall also execute and deliver or cause to be executed and/or delivered certifications, documents and forms typical to the sale of commercial real estate in DuPage County, Illinois.

**7.** Prorations, Adjustments and Expenses. The Purchase Price for the Property is subject to prorations and adjustments to be determined as of 12:01 a.m. on the Closing Date. Such prorations and adjustments shall be determined as follows:

**8.** City shall be responsible for and pay prior to Closing all real estate taxes assessed upon the Property for the years prior to the Closing.<sup>xxviii</sup>

**9.** All other expense with respect to the Property shall be allocated between City and Developer (or its nominee) as of the Closing Date, so that City pays that part of such other expenses accrued on or before the Closing Date, and Developer (or its nominee) pays that part of such expenses accrued after the Closing Date.

**10.** City shall pay:

- i.** all premiums for the owner's Title Policy required under this Agreement, including the premium for extended coverage (but excluding the cost of any endorsements requested by Developer (or its nominee));
- ii.** all state, county and municipal transfer taxes, if any;
- iii.** the cost of the Survey;
- iv.** one-half (1/2) of the Title Company's closing charges and fees; and
- v.** the recording fees for recording any release of lien or other unpermitted exception.

**11.** Developer (or its nominee) shall pay:

- i.** one-half (1/2) of the Title Company's closing charges and fees;
- ii.** the cost of any endorsements to the Title Policy requested by

Developer (or its nominee); and

iii. the recording fees for recording the Deed and all fees and charges relating to any mortgage or other financing by Developer (or its nominee).

All of the additional costs identified in this section shall be added to the eligible Redevelopment Project Costs for the Project.

**H. TIF Revocation; Dissolution.** The City shall not, unless ordered to do so by a judicial, administrative, executive or legislative body, with proper authority to do so, revoke or dissolve the TIF Ordinances if such revocation or dissolution would materially and adversely impact the City's ability to repay its obligations under this Agreement.

**I. Ad Valorem Real Estate Taxes.** As set forth above the Project Incremental Taxes are wholly paid from the City's levy and DuPage County's subsequent collection of *ad valorem* real estate taxes, as such a reduction in the amount collected will reduce the Project Incremental Taxes. Based on the foregoing and provided the covenants contained herein are not prohibited by the Laws, the Parties covenant as follows:

**1. Assessed Valuation of the Property.** The Parties acknowledge and agree that for purposes of this Agreement that the total projected minimum assessed value of the Property is as set forth on **Exhibit 11**, attached hereto, for the tax years noted therein (the "**Minimum Assessed Valuation**"). The Parties acknowledge and agree that the City is executing this Agreement in consideration that the assessed value of the Property is projected to increase minimally to the level of the Minimum Assessed Valuation as a result of the development of the Project. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer shall, during the duration of the TIF District and any extension thereof, directly or indirectly, initiate, seek and/or apply for proceedings before a court or tribunal of competent jurisdiction in order to lower the property tax or assessed value of all or any portion of the Project that would have the effect of lowering the assessed value of the Property below the Minimum Assessed Valuation as set forth in **Exhibit 12** for any given tax year. For avoidance of doubt, the Developer, including any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer, and the owner of the Project (if different from the Developer), have the right to contest the property tax or assessed value of the Property at any time provided that the outcome of such contest does not result in an adjusted assessed value of the Property below the Minimum Assessed Valuation.

**2. Prohibition of Underassessment Complaint.** During the duration of the TIF and any extension thereof, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing by the City of a complaint with the DuPage County Assessor or with the DuPage County Board of Appeals seeking to increase the assessed value of the Property up to, but not above, the Minimum Assessed Value for the applicable tax year as set forth in **Exhibit 13** (the "**Underassessment Complaint**").

**3. Prohibition on Exemption Complaint.** With respect to the Redevelopment Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer shall seek or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)), during the Term. The conditions, covenants, and restrictions of this Section H.3. shall be made on the Effective Date and remain current and in full force and effect, and shall run with the Property and shall be binding upon any successor in interest or transferee until the expiration of the TIF District or any extension thereof.

**I. Inducement.** The covenants of this Section shall be construed and interpreted as an express agreement by Developer with the City that an incentive inducing the City to enter into the rights and obligations of this Agreement is to increase the equalized assessed valuation of the Property, including the Redevelopment Project.

**J. Disclaimer.** **THE PAYMENT OF DEVELOPER'S SHARE OF INCREMENT SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY. DEVELOPER'S SHARE OF INCREMENT IS A LIMITED OBLIGATION OF THE CITY AND IS NOT SECURED BY THE CITY'S FULL FAITH AND CREDIT. DEVELOPER'S SHARE OF INCREMENT IS PAYABLE SOLELY FROM PROJECT INCREMENTAL TAXES DEPOSITED FROM TIME TO TIME INTO THE DEVELOPER SUB-ACCOUNT. IN THE EVENT THERE ARE INSUFFICIENT FUNDS IN THE DEVELOPER SUB- ACCOUNT, SUCH INSUFFICIENCY SHALL NOT BE A DEFAULT THEREON AND NEITHER DEVELOPER NOR ANY SUCCESSOR OR ASSIGN SHALL HAVE ANY RECOURSE AGAINST THE CITY IN THE EVENT THAT THERE IS AN INSUFFICIENCY IN THE DEVELOPER SUB-ACCOUNT. DEVELOPER SHALL HAVE NO CLAIM EXCEPT FOR FUNDS PAID INTO THE DEVELOPER SUB- ACCOUNT. ALL PAYMENTS<sup>xxix</sup> MADE TO DEVELOPER AND ANY SUCCESSOR OR ASSIGN SHALL NOT EXCEED SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 UNITED STATES DOLLARS (\$6,500,000.00) PLUS THE SUM OF INTEREST AS SET FORTH HEREIN. DEVELOPER'S SHARE OF INCREMENT AND THE CITY'S SHARE OF INCREMENT SHALL BE MADE ON A *PARI-PASSU* BASIS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN. THE CITY SHALL HAVE NO OBLIGATIONS TO MAKE PAYMENTS TO ANY PERSON OTHER THAN DEVELOPER OR ITS SUCCESSORS OR ASSIGNS, NOR SHALL THE CITY BE OBLIGATED TO PAY ANY CONTRACTOR, SUBCONTRACTOR, MECHANIC, OR MATERIALMAN PROVIDING SERVICES OR MATERIALS TO DEVELOPER FOR THE REDEVELOPMENT PROJECT. THE PARTIES AGREE THAT THE SOLE COSTS AND EXPENSES REIMBURSABLE BY THE CITY TO DEVELOPER AND ANY SUCCESSOR OR ASSIGN UNDER THIS AGREEMENT ARE REDEVELOPMENT PROJECT COSTS. NEITHER DEVELOPER NOR ANY SUCCESSOR OR ASSIGN WILL BE ELIGIBLE TO RECEIVE DEVELOPER'S SHARE OF INCREMENT DURING AN EVENT OF DEFAULT OR CURE PERIOD OF AN EVENT OF DEFAULT. UNTIL THE DATE NO EARLIER THAN THE EXPIRATION OF THE TIF DISTRICT OR ANY EXTENSION THEREOF, THE PROPERTY SHALL NOT BE USED FOR ANY PURPOSE MAKING IT EXEMPT FROM THE PAYMENT OF *AD VALOREM* REAL ESTATE TAXES AS SET**

**FORTH IN THE LAWS; AND DEVELOPER SHALL BE LIABLE FOR DAMAGES IN THE EVENT THERE IS AN UNAUTHORIZED TRANSFER UNDER THIS AGREEMENT AND IF THE CITY DOES NOT RECEIVE TAX INCREMENT FOR THE PROPERTY AND/OR THE REDEVELOPMENT PROJECT AS A RESULT THEREOF. THE PROVISIONS OF THIS DISCLAIMER ARE TO BE READ IN CONJUNCTION WITH THE PROVISIONS OF THIS AGREEMENT.**

#### **SECTION IV DEVELOPER'S OBLIGATIONS**

**A. Construction of Redevelopment Project.** As a condition to the City's reimbursement of Redevelopment Project Costs to Developer, Developer shall pay for and complete the Redevelopment Project in substantial compliance with the terms and conditions of this Agreement, the Concept Plan (as defined below), the Plans and Specifications (as defined below) and the Project Timeline (as defined below). The obligation of Developer to complete the Redevelopment Project in substantial compliance with the Agreement, the Concept Plan, the Plans and Specifications and the Project Timeline (as defined below) is a material covenant of this Agreement. Developer shall design and construct or cause to be designed and constructed the Redevelopment Project, inclusive of the creation of the Plans and Specifications (as defined below): (1) in a good and workmanlike manner and free of material defects; and (2) in accordance with all Laws applicable to the Redevelopment Project and the terms of this Agreement (including its exhibits and attachments). The term "substantial compliance" and any logical derivations thereof as used in this Agreement with respect to the Redevelopment Project shall mean completion of Developer's work on the Project, in substantial compliance with the Concept Plan and the Plans and Specifications approved by the City, to the extent necessary in order for Developer to occupy and conduct normal business operations in the completed Redevelopment Project for the purposes and uses approved by the City (except for items the non-completion of which does not materially interfere with the use of the Redevelopment Project) and provided the Redevelopment Project meets the [square footage standard]<sup>xxx</sup> and the project budget standard set forth Paragraph 8. of the Recitals of this Agreement. The Project's final unit count, unit mix and parking count will be determined conclusively through the City's zoning process.

**B. Concept Plan.** Developer has submitted and the City has accepted an overall "Concept Plan" for the Redevelopment Project which is attached hereto as **Exhibit 14**.

**C. Plans and Specifications.** As a condition to the City's reimbursement of Redevelopment Project Costs to Developer, Developer shall submit or has submitted to the City for its approval, which shall not be unreasonably withheld or delayed, the "**Plans and Specifications**" for the Project in sufficient time so as to allow for the City's review of the Plans and Specifications in accordance with applicable City ordinances and in accordance with the Project Timeline (as defined below). The Plans and Specifications may be submitted in phases or stages provided the submission schedule is agreed upon by the City and Developer. The Plans and Specifications shall be prepared and sealed by a professional engineer or architect licensed to practice in the State of Illinois. All construction practices and procedures set forth in the Plans and Specifications shall comply with all Laws and the Concept Plan. The Plans and Specifications shall be sufficiently complete and detailed to show that construction will be in material

conformance with the Concept Plan and this Agreement. The Plans and Specifications shall minimally include all construction, architectural, engineering drawings, maps, surveys or other documents to be approved by the City. The Plans and Specifications shall include sufficient utility capacity to allow for the operation of the Redevelopment Project and the completion of the Environmental Covenants (as set forth below). The Plans and Specifications, when submitted, shall be **Exhibit 15** to this Agreement.

**1. Limited Change.** The City shall review and consider any amendment or modification of the Plans and Specifications, and shall not unreasonably withhold or delay approval of any such request. Any approved change to the Plans and Specifications may proportionately reduce but shall not increase Developer's Share, or require the City to provide any other additional assistance to Developer.

**2. Limitation.** Consideration and approval the Plans and Specifications under this Section shall be independent of the building permit review, zoning or subdivision proposal processes as set forth in the City Code. Nothing in said Section is a substitute for and does not eliminate the requirement that Developer apply for and receive any and all necessary building permits, land use entitlements or subdivision proposal approvals for construction of the Redevelopment Project. The City's Fire Department must review and approve the Plans and Specifications prior to the Closing Date.

**D. Project Timeline.** Developer has submitted and the City has accepted the Project Timeline which is attached hereto as **Exhibit 6** as a condition to the City's reimbursement of Redevelopment Project Costs to Developer. Developer acknowledges the importance of all dates on the Project Timeline and shall comply with the same, subject to Force Majeure (as defined below). The City and Developer agree that amendments to and extensions of the Project Timeline not exceeding five (5) calendar days per occurrence shall not require prior City approval so long as Developer provides notice of such amendment or extension to the Project Timeline to the City when made (each a "**Permitted Extension**"); provided, however, the total number of days by which the Project Timeline may be extended without requiring prior City approval shall not exceed sixty (60) days in the aggregate, subject to Force Majeure. Any such Permitted Extension of the Project Timeline shall not require the Parties to amend this Agreement. The Project Timeline shall reflect the requirements of the Plans and Specifications.<sup>xxxii</sup> The Project Timeline will contain a benchmark that the Developer will secure a Certificate of Occupancy no later than [48] months after the Effective Date.

**E. Force Majeure.** As a condition to the City's reimbursement of Redevelopment Project Costs to Developer, Developer shall complete the Redevelopment Project in compliance with the Project Timeline, subject to reasonable delays in the performance of such obligations due to any matter beyond Developer's reasonable control that directly relates to Developer's obligations hereunder ("**Force Majeure**"). Force Majeure shall mean and include delays specifically and directly affecting the Project Timeline caused by unreasonable acts of the City germane to the completion of the Redevelopment Project when Developer in good faith has made and prosecuted requests for the same; failure to receive any governmental permits and/or approvals when Developer in good faith has made and prosecuted applications, permits and requests for the same; acts of God; a Change in Law (as hereafter defined); acts of terrorism; damage or destruction

caused by fire, explosion or other casualty; insurrection, riot, civil disturbance, sabotage, act of the public enemy, war or naval blockade; epidemic, pandemic, outbreaks of infectious disease or any other public health crisis that include quarantine or other work and employment restrictions imposed by government order, decree or statute and the continuing material consequences thereof, even after the termination or release of the foregoing government order, decree or statute; unknown or unforeseeable geo-technical or environmental conditions; major environmental disturbances; litigation brought by third parties due to no fault of either Party; inclement weather; labor strikes; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies; lockouts; acts of labor unions (whether legal or not); and court orders, laws or orders of governmental or military authorities. Developer in all instances shall be required to use reasonable efforts to mitigate the effects of a Force Majeure event, and in no event shall: (1) Developer's financial condition or inability to fund or obtain funding or financing constitute an event of Force Majeure; or (2) any delay arising from Developer's (or its affiliate's) Default under any document connected with the Redevelopment Project constitute an event of Force Majeure. Moreover, no event of Force Majeure shall be deemed to exist: (1) as to any matter that could have been avoided by the exercise of due care; and (2) unless Developer provides the City with written notice ten (10) calendar days after the occurrence of the claimed event of Force Majeure. The deadline to complete the Redevelopment Project or any applicable portions thereof shall be extended to reflect an actual delay, in day for day increments, in completion as a result of an event of Force Majeure.

A "Change in Law" means the occurrence, after the Effective Date, of an event described hereafter, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon: (1) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the City or with respect to those made by the City, only if they violate, void or materially modify the terms of this Agreement, adversely affect compliance with the terms of the Agreement or renders performance by the City illegal or impossible); (2) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the City); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline, directive, program or policy statement by a governmental agency (other than the City, or, with respect to those made by the City, only if they violate, void or materially modify the terms of this Agreement, adversely affect compliance with the terms of the Agreement or renders performance by the City illegal or impossible).

**F. Progress Updates.** Developer shall comply with reasonable requests of the City for progress updates to the Project Timeline but in no event more frequently than one (1) time per week, except in the event of: (1) the occurrence of Force Majeure, and/or; (2) any extension of the timeline as contemplated above, in which instance the City may make daily requests for progress updates.

**G. Self-Dealing; Competitive Bidding.** Developer shall not enter into any agreement or contract in connection with any Redevelopment Project Cost that could be construed as self-dealing or negotiated on other than an arms-length, competitive basis. Any agreement or contract in connection with any Redevelopment Project Cost, exclusive of professional services, shall be awarded through competitive bidding. Developer shall provide, within five (5) business days of written request by the City, copies of all agreements and contracts entered into in connection with

Redevelopment Project Costs, as defined in the Act. Notwithstanding anything contained in this Section IV(G) to the contrary, the City acknowledges that Developer intends to designate (i) (INSERT), as its “**Development Manager**” for the Redevelopment Project pursuant to a separate developer management agreement, (ii) (INSERT), a \_\_\_\_\_ corporation, as its “**General Contractor**” for the Redevelopment Project pursuant to a separate general contractor agreement, (iii) (INSERT), a \_\_\_\_\_ corporation, as its architect (“**Architect**”); (iv) (INSERT), a \_\_\_\_\_ corporation, as its engineer (“**Engineer**”); and (v) (INSERT), a \_\_\_\_\_ corporation, as its marketing agent (“**Marketing Agent**”). Provided that the terms of the developer management agreement, general contractor agreement, architect agreement, engineer agreement and marketing agreement are consistent with arms-length, competitive contracts for such services, the Development Manager, General Contractor, Architect, Engineer and Marketing Agent shall not be considered to be self-dealing and shall not be subject to the competitive bidding requirement of this Section IV(G).<sup>xxxii</sup>

**H. Governmental Approvals.** Developer shall secure and comply with all “**Governmental Approvals**” to construct the Redevelopment Project in accordance with all Laws. The City agrees, as set forth below, to employ reasonable and good faith efforts to cooperate with Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with applicable Laws.

**I. Certificate of Occupancy.** A “**Certificate of Occupancy**” issued by the City for the Redevelopment Project shall be conclusive evidence that the Redevelopment Project is complete and that it is in compliance with the Code of Ordinances of the City of Wood Dale, and any amendments thereto duly enacted, including without limitation, the City's Building Codes, Electrical Code, Plumbing Code, Zoning Code, Fire Prevention Codes, Mechanical Code, Accessibility Code, Energy Code and all other City ordinances, but shall not constitute evidence that Developer has otherwise complied with the Agreement.

**J. Construction Bonds for the Construction of the Redevelopment Project.** Developer shall cause its General Contractor and subcontractors to comply with applicable bond requirements established by City ordinance in connection with the Redevelopment Project.<sup>xxxiii</sup>

**K. Payment of Fees.** Developer will pay all City permit and impact fees when due and as generally applicable and as established by City ordinance at the time of payment.

**L. The City's Right to Monitor and Inspect the Redevelopment Project Site.** In addition to any other rights specified in this Agreement with regard to the construction and maintenance of the Redevelopment Project, the City shall have the right, but not the obligation, to inspect the construction site at the Property for the purpose of monitoring the progress of the Redevelopment Project. During such inspections, which shall be made with reasonable advance notice (which notice may be oral) and during normal business hours, City representatives shall be allowed access to the site as necessary for the City to determine whether the Redevelopment Project is proceeding in a timely manner and in compliance with all applicable Laws, subject to limitations required by safety considerations and without interfering in the reasonable progression of the contractor's work. The rights set forth herein and the City's exercise of those rights shall not be construed to relieve Developer of its separate and independent obligations under this

Agreement and under applicable Laws, the City Code, regulations and ordinances, nor shall it act as a waiver of any further rights of the City regarding the construction and maintenance of the Redevelopment Project, including the right to require compliance with the City Code and issue stop work orders or violation notices.

**M. Maintenance of the Redevelopment Project and Property.**

1. Developer shall direct the removal of any debris resulting from the construction of the Redevelopment Project, which removal shall be conducted in accordance with all applicable Laws and the City Code.

2. During the construction of the Redevelopment Project, Developer shall cause its general contractor or project manager to be responsible for cleaning up the mud and dirt on abutting streets and rights of way resulting from the construction of the Redevelopment Project. Developer's agents shall clean the roadways within forty-eight (48) hours after receiving notice from the City. In the event that Developer fails to have the rights of way cleaned of dirt and debris in accordance with the aforementioned provisions, the City shall have the right to immediately undertake the cleaning and clearance activities as set forth above, and any such reasonable costs or expenses incurred by the City in undertaking the aforesaid shall be reimbursed by Developer within twenty (20) calendar days of the City's presentation to Developer of a written invoice detailing the aforesaid costs and expenses.

3. The outside lighting and construction of the Redevelopment Project shall conform to the requirements set forth in the City Code and to the Site Plan so as to minimize the effect of such lighting on the surrounding area and to ensure the uniform development of the community at large.

**N. Operating Covenant.** Developer hereby covenants and agrees to cause the continuous taxable use of the Property, in accordance with approved zoning and Plans and Specifications, and all applicable Laws, following the City's issuance of the final Certificate of Completion through and until the expiration of the TIF District or any extension thereof. Developer shall use commercially reasonable efforts to keep the Property occupied to minimize vacancies. The Developer also covenants and agrees that until the expiration of the TIF District or any extension thereof, it will not allow the Property to be used for an ad valorem property tax exempt use or purpose. In any document regarding or related to the sale, lease or other disposition of the Property whereby Developer is dispossessed of the Property, such documentation shall ensure that the covenants, conditions and terms of this Section is explicitly incorporated into the dispositional agreements. The terms, covenants, and conditions set forth in this Section and the future owner's/tenant's obligation to comply with said terms, covenants and conditions shall be explicitly set forth in the memorandum to be recorded by the Parties against the Property on the Effective Date. The provisions of this Section shall be collectively referred to as the "**Operating Covenant**".

**O. Environmental Covenants.**



**1. Environmental Laws.** “**Environmental Laws**” shall mean all statutes, ordinances, bylaws, rules and regulations, executive orders and other administrative orders, judgments, decrees, injunctions and other judicial orders of or by any federal, state or local governmental authority or tribunal, now or hereafter in effect, relating to pollution or protection of human health or the environment, including, without limitation, emissions, discharges, releases or threatened releases of hazardous substances, or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances (as defined below), including, without limitation, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.

**2. Hazardous Substances.** “**Hazardous Substances**” shall mean any chemical, substance, waste, material, organism, gas or emission which is deemed hazardous, toxic, a pollutant or a contaminant under any, or which has been shown to have significant adverse effects on human health or the environment. “**Hazardous Substances**” shall include, without limitation, petroleum and petroleum products, asbestos, chlorofluorocarbons, radon gas, toxic mold and bacteria and polychlorinated biphenyls, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar mixed-use residential properties for the purposes of cleaning or other maintenance or operations and otherwise used in compliance with the Hazardous Materials Laws.

**3. Developer’s Environmental Covenants.** Developer covenants (the “**Developer’s Environmental Covenants**”) that (1) to its knowledge, the Plans and Specifications were completed in a manner to ensure that the Project is in compliance with all Environmental Laws; (2) the construction, development and operations of the Project will materially comply with all Environmental Laws; (3) Developer shall promptly notify the City upon becoming aware of any environmental investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other person which is directed or threatened against the Project, and Developer shall take prompt and appropriate actions to respond thereto in accordance with the requirements of the applicable Environmental Laws; (4) Developer shall promptly notify the City upon becoming aware of any non-compliance with or violation of the requirements of any Environmental Law or the release, spill or discharge, threatened or actual, of any Hazardous Materials on the Property; (5) Developer shall perform or cause the performance of all “**Response Activities**”<sup>xxxiv</sup> required for Project completion in accordance with the Plans and Specifications and as may be required in the Illinois Environmental Protection Agency’s “**Site Remediation Program.**” In addition to the foregoing, Developer and the City agree that the performance of the obligations of the Site Remediation Program, if enrolled, shall be deemed complete upon Developer’s receipt of a “**No Further Remediation Letter**” for residential uses (the “**NFR**”). The City will not exercise any decision-making control over the environmental compliance or environmental remediation of the Property outside of the normal exercise of the City’s police powers. The City is relying on Developer to cause the environmental remediation of the Property, if and to the extent necessary or required under applicable Law, to allow for the commencement and operation of the redevelopment of the Property as contemplated herein.

**P. Prohibition on Certain Liens.** Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Redevelopment Project or the Property as a result of acts of Developer, its agents or independent contractors. Within 30 days of receiving notice of any lien filed against the Redevelopment Project as a result of the acts of Developer, its agents or independent contractors, Developer shall remove the lien or expeditiously contest the lien, in which case a bond shall be posted in accordance with applicable laws and the requirements of the Title Company.

**Q. Equity.** Developer shall contribute and invest not less than fifteen percent (15%) of the total amount of the Project Budget and such amount shall be known as the “**Equitable Contribution**”.

**R. Building Department Liaison; Developer Liaison.**

**1.** The City shall designate an individual to serve as the “**City’s Building Department Liaison**” for the City, who shall be the point of contact between Developer and the City’s Building Department. The City’s Building Department Liaison shall be:

Ed Cage, Project Manager  
City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, Illinois 60191  
Phone: 630-787-3738  
Facsimile: 630-7873758  
Email: ecage@wooddale.com

**2.** Developer shall designate an individual to serve as “**Developer’s Building Department Liaison**” for Developer, who shall be the point of contact between Developer and the City’s Building Department. Developer’s Building Department Liaison shall be:

Brad Friedman  
773-934-8954  
BFriedman@LynmarkGroup.com

**SECTION V  
LEGAL EFFECT**

**A. Legal Effect.** In the event that any court or governmental agency, having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement determines that this Agreement or any reimbursement to be made to Developer hereunder are contrary to Law, or in the event that the legitimacy of the TIF Ordinances is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City shall be responsible for defending the integrity and legality of the TIF Ordinances and this Agreement. In the event of an adverse lower court or agency ruling, any reimbursement to Developer shall be suspended

during the pendency of any appeal thereof, but reimbursements to Developer shall be reinstated retroactively if such adverse ruling is reversed by the reviewing court or agency.

**B. Prevailing Wage.** As set forth in this Agreement, the Laws shall include, without limitation, the PWA. This Agreement calls for the construction of a “public work,” within the meaning of the PWA. The PWA requires contractor and subcontractor to pay laborers, workers and mechanics employed on public works projects, no less than the general prevailing rate of wages (consisting of hourly cash wages plus fringe benefits) for work of similar character in the locality where the work is performed. The Illinois Department of Labor (“IDOL”) publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. IDOL revises the prevailing wage rates and the Developer’s contractors and subcontractors have an obligation to check the IDOL’s website for revisions to prevailing wage rates. Information regarding current prevailing wage rates is available at the IDOL’s website. Developer’s General Contractor and subcontractors shall comply with all requirements of the PWA. Developer’s obligations under this Section V(B) shall be expressly limited to any general contractors, subcontractors, laborers, workers, and mechanics performing services pertaining to the Redevelopment Project Costs. For purposes of this Agreement, the Developer shall be deemed to have complied with the PWA if it complies with applicable federal labor standards (including the Davis-Bacon Act) in connection with its plan of finance for the Project.

## **SECTION VI INSURANCE AND INDEMNIFICATION**

**A. Builder’s Risk Prior to Completion.** Before and as Developer constructs any improvements on the Property, Developer or its general contractor shall keep in force at all times through and until the completion of the Redevelopment Project, as certified by the City, completed builder’s risk insurance insuring against risk of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the construction of the Redevelopment Project (including on-site stored materials and off-site materials that have been fabricated or purchased). Such insurance policies shall be issued by companies with AM Best ratings of at least A-VII. Subject to the requirements of the Developer’s project financing, the proceeds of any claim on this builder’s risk insurance shall be used to repair and/or complete the work that is the subject of the claim. All deductibles or referenced insurance coverages must be borne by Developer or its independent contractors or subcontractors. All such policies shall contain a provision that said insurance policy will not be cancelled without thirty (30) calendar days prior written notice to the City.

**B. Insurance.** Prior to commencement of the Redevelopment Project, Developer shall maintain or self-insure or procure (or shall have procured, as applicable) and shall maintain, at Developer’s sole cost and expense, in full force and effect during construction operations, and thereafter the owner of the Property shall procure and maintain during the term of this Agreement a policy or policies of general commercial comprehensive liability insurance, including contractual liability insurance and, during any period of construction, contractor’s general liability insurance with liability coverage under each such policy to be not less than Three Million and No/100 U.S. Dollars (\$3,000,000.00) for each occurrence and in the aggregate, worker’s compensation insurance in statutory limits, employer’s liability insurance with at least One Million and No/100

U.S. Dollars (\$1,000,000.00) per accident, One Million and No/100 U.S. Dollars (\$1,000,000.00) per disease, per employee and One Million and No/100 U.S. Dollars (\$1,000,000.00) per disease, aggregate and auto liability with combined single limits of at least Five Million and No/100 U.S. Dollars (\$5,000,000.00) per occurrence. All such policies shall be in such form and issued by such companies as shall be reasonable to protect the owner of the Property and the City from any liability incidental to the use of or resulting from any claim for personal injury or property damage occurring at, on or about any public property or rights-of-way until Project completion, or stemming from Developer's construction and/or improvement of any public property or rights-of-way until Project completion. Each such policy shall name the City and its officials (whether appointed or elected), including the City's mayor and the City Council and the City's officers, employees, agents and attorneys, as additional insureds and shall contain an affirmative statement by the issuer that it will give written notice to Developer and the City at least thirty (30) calendar days prior to any cancellation or amendment of its policy. A certificate of insurance for each such policy naming the City as an additional insured consistent with the above requirements must be delivered to the City by Developer before Developer commences construction of any of the improvements that are a part of the Redevelopment Project. Any other insurance or self-insurance maintained by the City shall be in excess of and shall not contribute to the protection the City receives as an additional insured on the insurance required by this Agreement. Subject to the rights of the Developer's lender, any liability insurance proceeds received hereunder to which the City is legally entitled shall be deposited in the general operational fund of the City as such sums will be used to reimburse the City for sums normally paid from the general fund of the City. Developer shall require any and all subsequent owners or tenants of the Property to comply with the terms of this Section of this Agreement.

**C. Indemnification.** To the fullest extent permitted by Law, Developer, its successors and assigns shall indemnify, defend and hold harmless the City, its officers and employees, from and against any and all costs, claims, losses, or direct damages arising from the non-completion of the Project or other Event of Default (as defined below) in accordance with the terms of this Agreement, provided the damage or loss is not the result of the City's or its officers' or agent's own negligence, fault or intentional conduct.

## **SECTION VII DEFAULT; REMEDIES**

**A. Cure; Cumulative Remedies; No Waiver.** In the "Event of Default" or "Default" said defaulting Party shall commence to cure within five (5) calendar days after receipt of written notice from the other Party, except in a City emergency, and proceed to cure or remedy such default or breach within thirty (30) calendar days after receipt of such thirty (30) calendar day notice; provided, however, that if such Default is incapable of being cured within said thirty (30) calendar day period and the defaulting Party commences to cure the Default within said thirty (30) calendar day period and proceeds with due diligence to cure the same, such cure period shall be extended (not unreasonably) for the length of time reasonably necessary to cure the Default upon written request for the same by the defaulting Party. At any time during the cure period (or extension thereof), the aggrieved Party may request a written report on the status of the steps taken to cure the alleged Default or breach, which shall be complied with by the defaulting Party within two (2) business days after receipt of the original request. At all times during a cure period or

extension thereof, the defaulting Party shall diligently follow through to completion all such steps necessary to remedy the alleged Default within the shortest reasonably possible time. Intentional failure of a defaulting Party to respond to a request for information as set forth herein shall be considered a failure to diligently undertake the cure of the alleged Default and shall be deemed a waiver of the defaulting Party's opportunity to cure. In case such action is not taken or diligently pursued or the Default or breach is not cured or remedied within the aforementioned period, the aggrieved Party may institute such proceedings (at law or in equity) as may be necessary or desirable in its opinion to cure and remedy such Default or breach. The rights and remedies of the Parties, whether provided by Law or in this Agreement, shall be cumulative and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by such Party at the same time or different times, of any other remedies for the same Default or breach by the defaulting Party. Any delay by any Party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way (it being the intent of this provision that such Party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the Default involved). No waiver made by any Party with respect to any specific Default by any other Party under this Agreement shall be construed as a waiver of rights with respect to any other Default except to the extent specifically waived in writing. Notwithstanding the other provisions of this Agreement, in the event of an emergency threatening the health, safety and welfare of the City or its residents the City shall have the right, but not the obligation, to enter upon the Property and cure any Default without providing notice or a cure period as set forth herein. The Parties acknowledge that the City shall be immediately relieved of its obligation to make any payments of Developer's Share of Increment and all future obligations to make such payments shall be deemed null and void and otherwise held for naught in the event Developer or its preapproved assignee is in Default of this Agreement beyond any applicable notice and cure period and has failed to cure the breach as provided for herein in this Section; provided, however, that the City's obligations to make payments of the Developer's Share of Increment shall be reinstated if the Event of Default is subsequently cured by or on behalf of the Developer and this Agreement was not otherwise terminated.

**B. Event of Default.** For purposes of this Agreement, the occurrence of any one (1) or more of the following, after any applicable cure period has expired, shall constitute an Event of Default: If the City or Developer fails (in whole or in part), breaches or otherwise defaults in fulfilling any of its material obligations under this Agreement or fails to materially perform, observe or comply with any of the covenants, agreements or obligations hereunder and such failure or breach (excluding a monetary failure or breach) has, as determined by the non-breaching party, a material adverse effect on the construction, operation or maintenance of the Project.

**C. Limitation of Liability.** Notwithstanding anything contained in this Agreement to the contrary, upon the completion of the construction of the Redevelopment Project (as confirmed by the issuance of the Certificate of Completion), all of Developer's obligations under this Agreement shall cease, except that the following shall survive completion of the construction of the Redevelopment Project until the earlier of the expiration of this Agreement or the expiration of the TIF District or any extension thereof:

1. The Operating Covenant (as defined in Section IV(N) herein), which

covenant shall run with the land; and

2. Developer's covenant not to assign this Agreement or assign, convey, lease, license or in any other way transfer the Property to any individual or entity that is exempt from payment of *ad valorem* real estate taxes pursuant to Section X(Q);

3. The obligations set forth in Section IV(K), regarding the full reimbursement of the expenses of the City in the event of termination of the Agreement; and

4. Developer's obligation with respect to books and records and audits under Section IX(D.) of this Agreement.

**D. Waiver and Estoppel.** Any delay by the City or Developer in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City or Developer of or limit such rights in any way. No waiver made by the City or Developer with respect to any specific default shall be construed, considered or treated as a waiver of the rights of the City or Developer with respect to any other default.

**E. Remedies.**

1. **City Remedies.** Upon the occurrence of an Event of Default, which continues after written notice thereof and the expiration of the applicable curative period without cure having been effectuated, the City may pursue and secure any remedy available at Law or equity, including without limitation: (a) compensatory damages not to exceed the lesser of Developer's Share or Six Million five hundred Thousand and No/100 U.S. Dollars (\$6,500,000.00), (b) specific performance, (c) self-help, (d) injunctive relief, (e) termination of the Agreement; and/or (f) disgorgement of payments previously distributed by the City as the Developer's Share not to exceed the compensatory damages set forth in sub-section (a) of this Section. Any and all rights or claims of the City against the Developer for amounts in excess of \$6,500,000.00 are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Developer, to the fullest extent permitted by Law. The limitations on compensatory damages in this section shall not apply in cases of uninsured/underinsured serious bodily injury, death, or the transfer of the Property to any individual or entity that is exempt from payment of *ad valorem* real estate taxes.

In the event that the City cannot prohibit Developer from contesting *ad valorem* real estate taxes on the Property or the Redevelopment Project in violation of this Agreement, the City may reduce Developer's Share on a dollar for dollar basis by the amount the *ad valorem* real estate taxes are reduced below the amount of real estate taxes that would be levied based on the Minimum Assessed Valuation. Notwithstanding the foregoing, the City shall be entitled to damages and any other remedies available at Law and equity in an amount of no less than 200% of the actual uncollected Project Incremental Taxes where the Property or the Project is used or conveyed, leased, licensed or in any other way transferred for a tax-exempt purpose without the prior approval of the City in writing and such use results in an exemption from *ad valorem* taxes as determined by the Illinois Department of Revenue.

**2. Developer Remedies.** Upon the occurrence of an Event of Default, which continues after written notice thereof and the expiration of the applicable curative period without cure having been effectuated, the sole remedies of Developer shall be (z) injunctive relief, (y) specific performance, (x) mandamus, and (w) *quo warranto*. Neither the Developer nor any agents, successors, assigns or other litigants against the City are entitled to damages against the City exceeding Developer's Total Reimbursement Amount unpaid for an uncured Default of this Agreement, excluding any monetary Default or Event of Default by the City.

## **SECTION VIII DISCRIMINATION; ETHICS.**

**A. No Discrimination.** Neither Developer nor any of its contractors, subcontractors, employees, agents or material suppliers shall discriminate based upon race, color, religion, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military status, parental status or source of income in relation to the construction of the Redevelopment Project and Developer and all of its contractors, subcontractors, employees, agents and material suppliers shall comply with any and all federal, state and local Laws, statutes, ordinances, rules and regulations with regard to nondiscrimination in the construction of the Redevelopment Project.

**B. Ethics.** The Parties hereby covenant and agree that neither the City mayor nor any member of the City Council nor any other public official or public employee who exercises any direct decision making functions or responsibilities with respect to the Redevelopment Project during the individual's term or term of employment and for one (1) calendar year thereafter, shall have any personal or financial interest, direct or indirect, other than the individual's salary, in any matter to be performed in connection with the Redevelopment Project; provided, however, nothing in this Section shall be construed to preclude the right of said officials or employees to be reimbursed by Developer for services rendered or costs incurred in connection with discharging their responsibilities under this Agreement.

## **SECTION IX PERFORMANCE**

**A. Time of the Essence.** Time is of the essence for purposes of this Agreement.

**B. Permitted Delays.** Neither the City nor Developer shall be considered in breach or default of its obligations hereunder in the event of a delay as a result of Force Majeure in accordance with Section IV.

**C. Access to the Property.** Any duly authorized representative of the City its designee shall, at all reasonable times upon prior reasonable notice via telephone or electronic mail, have access to the Property for the purpose of confirming Developer's compliance with this Agreement and to promote and protect the health, safety and welfare of the City and its residents. Nothing in this Section shall operate to abrogate or limit the City's right to exercise its police powers and inspection rights.

**D. Books and Records; Audit Rights.** Developer shall at all times during the construction of the Redevelopment Project keep and maintain (separate from any of Developer's other books, records and accounts) accurate and complete records pertaining to the Redevelopment Project including, without limitation, financial statements, records and books of account reflecting Redevelopment Project Costs and all other construction and redevelopment costs, in accordance with Generally Accepted Accounting Principles, with such exceptions as may be specifically provided for in this Agreement. The City and its representatives shall have, during normal business hours and upon reasonable advance notice, access to examine and photocopy such records, financial statements and other documentation as, and to the extent necessary for its performance of its administrative tax increment financing obligations under this Agreement until one (1) full year after completion of the Redevelopment Project) and Developer shall maintain all such books and records for at least such period of time. The City shall have the right to disclose financial information about the Redevelopment Project, as described above, to the DuPage County Assessor and to others only to the extent required by Law including, without limitation, Rule 15c2-12, which was promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. The City's audit rights under this Section IX(D) shall be expressly limited to the books and records pertaining to the Redevelopment Project Costs.

## **SECTION X MISCELLANEOUS PROVISIONS**

**A. Drafter Bias.** The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent legal counsel, and that this Agreement is a compilation of said negotiations. As a result, in the event that a court is asked to interpret any portion of this Agreement, neither of the Parties shall be deemed the drafter hereof and neither shall be given the benefit of such presumption as enumerated in any applicable Law.

**B. Partnership Not Intended Nor Created.** Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.

**C. Entirety and Binding Effect.** This Agreement represents the entirety of the agreement between the Parties. The rights and obligations of Developer and City under this Agreement are both personal and appurtenant to Developer and the City (as applicable), and no other person or entity shall acquire or have any rights hereunder or by virtue hereof, except with respect to an assignee of the type contemplated by an assignment expressly permitted pursuant to the Agreement.

**D. Use of Headings.** The headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.

**E. Amendments and Modifications.** Except as otherwise provided for herein, this Agreement may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the Parties hereto. All exhibits



and schedules to this Agreement are hereby incorporated in the in the terms of this Agreement as if fully restated herein.

**F. Prevailing Party.** In the event that either Party breaches this Agreement or is in default hereunder or in the event that the enforcement of this Agreement is litigated before a court of Law or an administrative agency, the non-prevailing Party shall be liable to the prevailing Party for the prevailing Party's reasonable attorneys' fees and costs incurred by the prevailing Party. Prevailing Party shall mean any defendant found not liable on any and all counts and/or any plaintiff recovering on any count. Except as otherwise limited in Section VII of this Agreement, each Party shall be entitled to any and all remedies at Law and in equity under this Agreement.

**G. Counterparts and Facsimile Transmission.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original with the same effect as if the signatures thereto were on the same instrument. A signature affixed to this Agreement and transmitted by facsimile shall have the same effect as an original signature.

**H. Previous Agreements.** The foregoing is the entire agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiations between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified and void.

**I. Restrictions.** Prior to the completion the Redevelopment Project, and except as otherwise provided in this Agreement, Developer shall not seek or authorize any real estate tax exemption as such term is used and defined in the Illinois Constitution and the Illinois Property Tax Code.

**J. Notices.** Any and all notices, demands, requests, consents, approvals, communications or other instruments required or permitted to be given under this Agreement shall be in writing (unless otherwise set forth herein) and shall be executed by a Party or an officer, agent or attorney of the Party, and shall be deemed to have been duly received upon: (a) actual receipt if personally delivered and the sender received written confirmation of personal delivery; (b) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier; (c) receipt as indicated by the electronic transmission confirmation when sent via telecopy, facsimile transmission or email (provided that, with respect to email, any email that is marked undeliverable to an email address list below shall not be effective notice and notice must be provided through a different means listed herein); (d) three (3) calendar days after the sender posts notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested; or (e) when delivery is refused. Notice of the completion of construction of the Redevelopment Project, and any notice of default or breach by either party shall also so given to by each party City.

Notice shall be sent to the addresses set forth below, or to such other address as either Party may specify in writing.

The City at: City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, IL 60191  
Attn: City Manager

With a copy to: Bond, Dickson & Conway  
City Attorneys  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187  
Attn: Patrick K. Bond  
[e-mail: patrickbond@bond-dickson.com](mailto:patrickbond@bond-dickson.com)

The Developer: The Lynmark Group  
4 Executive Blvd, Suite 200  
Suffern, NY 10901

Joshua Goldstein  
[JGoldstein@LynmarkGroup.com](mailto:JGoldstein@LynmarkGroup.com)

John Bryan  
[JBryan@LynmarkGroup.com](mailto:JBryan@LynmarkGroup.com)

Lucille Falcone  
[LFalcone@LynmarkGroup.com](mailto:LFalcone@LynmarkGroup.com)

Brad Friedman  
[BFriedman@LynmarkGroup.com](mailto:BFriedman@LynmarkGroup.com)

With a copy to: Bill Skalitzky  
Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, IL 60605  
Facsimile: 312-491-4411  
[wskalitzky@att-law.com](mailto:wskalitzky@att-law.com)

or to any other person or place which any Party hereto, by its prior written notice, shall designate for notice to it from the other Parties hereto.

**K. Immunity.** Nothing contained in this Agreement constitutes a waiver of the City's governmental immunities as provided by the Laws of the United States or the State of Illinois.

**L. Qualified Professionals.** Developer agrees to engage qualified professionals for all work anticipated in this Agreement and, upon request, shall furnish the City with the names of such professionals.

**M. Consent; Approval.** Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, delayed or conditional, unless otherwise provided in this Agreement.

**N. Severability.** The provisions of this Agreement shall be deemed to be severable, and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions hereof, and the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by Law.

**O. Best Interests; Cooperation.** It is understood and agreed that the successful consummation of this Agreement and the Redevelopment Project proposed herein are in the best interests of the Parties and requires their continued cooperation. Developer hereby evidences its intent to fully comply with all City requirements, its willingness to discuss any matters of mutual interest that may arise including, but not limited to, potential negotiations with any additional governmental entities and Developer's willingness to assist the City, in good faith and to the extent commercially reasonably possible, with all matters related to the redevelopment or the Property proposed herein. The City hereby evidences its intent to reasonably cooperate with Developer and to cooperate, to the greatest extent possible, in the resolution of mutual problems and the City's willingness to facilitate the redevelopment of the Property as contemplated by the provisions of this Agreement.

**P. Recording.** Promptly after Developer closes on the purchase of the Property pursuant to this Agreement, the Parties shall record a Memorandum of Agreement, a copy of which is attached hereto and incorporated herein as **Exhibit 16**, in the Office of the DuPage County Recorder of Deeds (the "**Memorandum**"). The recording fees, if any, shall be paid by Developer. The Memorandum shall minimally contain (1) an affirmative appurtenant covenant running with the land and binding upon Developer and all its successors that Developer and its successors are prohibited from assigning, conveying, leasing, licensing, selling or in any other way transferring or in any way using the Property or the Project to a person or entity exempt from the payment or imposition of *ad valorem* taxes under the Laws, including, without limitation the DuPage County Tax Ordinance (the "**Prohibited Purposes**") and (2) the Operating Covenant. The Parties covenant and agree not to record this Agreement.

**Q. Assignment.**

1. **Prohibited Transfer.** Prior to Developer's completion of the "base" or "shell" building(s) evidenced by the Developer securing a Certificate of Occupancy for the base or shell of the building, any conveyance, assignment, or other transfer of this Agreement or the Property in part or in total, but excluding any lease or license of the Property, shall be pre-approved in writing by the City, which approval shall be granted or denied, in the City's sole but reasonable discretion, within thirty (30) days of its receipt of Developer's written notice of such proposed conveyance, assignment, or transfer. The City's failure to respond to Developer's request within such thirty (30) day period shall constitute a waiver of the City's approval right set forth herein. Any assignee, successor, or transferee under this provision shall be bound in writing by the duties and terms of Developer under this Agreement including, without any limitation, the prohibition of using

the Property in a manner that is exempt from the imposition of ad valorem real estate taxes and shall further include the Operating Covenant.

Subsequent to the Developer's completion of the "base" or "shell" building(s), the Developer may convey, transfer or assign this Agreement or the Property in part or in total without the written approval of the City if the assignee is an affiliate of the Developer entity(ies), or provided (i) Developer's assignee demonstrates to the City's reasonable satisfaction that it is financially and legally capable of completing the Project according to the terms and conditions of this Agreement; (ii) Developer provides written notice to the City of any proposed assignment no later than thirty (30) days prior to the assignment; (iii) under no condition may Developer assign this Agreement or assign, convey, lease, license or in any other way transfer the Property to any individual or entity that is exempt from payment of ad valorem real estate taxes or permit the Property to be used for any use that may be exempt from the payment of ad valorem real estate taxes, (iv) Developer shall obtain a resolution from any transferee other than a publicly traded company, on or prior to the date of transfer, containing a commercially reasonable Patriot Act certification unless such transferee is and will provide a copy of such resolution to the City, (v) Developer shall not knowingly transfer the Property to an individual or entity controlled by an individual convicted of a felony without the City's prior written approval, and (vi) the assignee executes an assignment and assumes the Developer's remaining obligations under this Agreement. Any assignee, successor, pledge or transferee of Developer hereunder shall be bound by the Operating Covenant with respect to items (iii) and (v).

In addition, and notwithstanding any provision in this Agreement to the contrary, the Developer may collaterally assign its interest in this Agreement to a lender that is providing financing for this Project so long as the collateral assignment does not give any such assignee lender any rights as Developer under this Agreement unless it assumes all of Developer's obligations under this Agreement.

**2. Assignment of the City Note.** The City Note may be (i) assigned or pledged as collateral by Developer to any lender under the Developer's plan of finance for the Project, (ii) assigned or transferred by the Developer to any entity controlling, controlled by or under common control with the Developer or to any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Developer. Following the issuance of the Certificate of Completion, the Developer may transfer, sell or assign the City Note at any time to a Qualified Investor. For purposes hereof, a Qualified Investor is a bank, financial institution or entity with assets exceeding \$5,000,000, registered investment company or other person or entity designated as an "accredited investor" under Regulation D of the Securities Act of 1933.

**R. Estoppel Certificates.** The City agrees that it will, from time to time, but not more than twice per calendar year, upon request by Developer, execute and deliver to Developer and to any parties designated by Developer, within thirty (30) calendar days following a demand therefore, an estoppel certificate on Developer's form, certifying, if true: (1) that this Agreement is unmodified and in full force and effect (or if there had been modifications, that the same is in full force and effect as so modified); (2) that there are no defaults hereunder (or specifying any

claimed defaults); (3) that the City Note (when issued) is in full force and effect; and (4) such other matters as may be reasonably requested by Developer relating to this Agreement, the City Note and any transfer or assignment of this Agreement or the City Note.

**S. Police Power.** Nothing in this Agreement shall limit the standard police power functions of the City or the City's right to exercise the same. Any exercise by the City of its police power rights shall not be read as a remedy as that term is set forth in this Agreement. As set forth above, in the event of a bona fide emergency, the City shall have the right to remedy the cause of said bona fide emergency as determined in its sole and absolute discretion.

**T. Opinion of Counsel.** Developer shall cause its counsel to submit a Developer's Counsel Opinion in substantially similar form as that which is affixed hereto as **Exhibit 17**. Developer retained and utilized the services of counsel in the drafting and completion of this Agreement.

## Section XII

### MORTGAGING OF THE PROJECT

Commencing on the Effective Date, any mortgage or deed of trust that the Developer or its affiliate may elect to execute and record or permit to be recorded against the Project or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the Developer or Developer's Affiliate may hereafter elect to execute and record or permit to be recorded against the Project or any portion thereof with the prior written consent of the City is referred to herein as a "Permitted Mortgage." In addition, any mortgage executed by the Developer or Developer's Affiliate (as hereafter defined) in connection with a HUD-Insured Loan (as hereafter defined) shall be a Permitted Mortgage without regard to whether it was in existence on the Effective Date or was recorded against the Project after the Effective Date (the City consent shall not be required for such mortgage). It is hereby agreed by and between the City and the Developer as follows:

1. As part of its plan of finance, the Developer or Developer Affiliate will apply for a commitment from the United States Department of Housing and Urban Development ("HUD") and Berkadia Commercial Mortgage LLC ("Berkadia") for a loan insured under Section 221(d)(4) of the National Housing Act, as amended (the "HUD-Insured Loan"), the proceeds of which will be used to help finance the development and construction of the Redevelopment Project and related facilities. If the Developer or Developer Affiliate receives a HUD commitment for the HUD-Insured Loan, a mortgage in favor of Berkadia, its successors and assigns, will be recorded against the Project (the "HUD-Insured Mortgage") as security for the HUD-Insured Loan. HUD does not permit a right of reverter under its HUD-Insured Loan program. Accordingly, if the Developer or Developer Affiliate obtains a HUD-Insured Loan as financing for the Project, the City agrees that any right of reverter or similar provision, if any, included in the City's special warranty deed to the Property shall terminate automatically upon the recording of the HUD-Insured Mortgage. For purposes hereof, "Developer Affiliate" means the single-purpose entity that the Developer will create for the sole purpose of owning the Project in accordance with the requirements of the HUD-Insured Loan.

2. In the event that a mortgagee or any other party shall succeed to the Developer's (or Developer's Affiliate's) interest in the Project or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest in this Agreement or the City Note, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

3. In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest in this Agreement or the City Note, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of the Developer hereunder; however, if such mortgagee under a Permitted Mortgage does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

4. The Developer shall be solely responsible for providing any required notice of an Event of Default to its mortgagee(s), if applicable. Nothing herein shall be read as providing any such mortgagee with any additional cure rights.

5. Prior to the issuance by the City of a Certificate of Completion in accordance with this Agreement, no New Mortgage shall be executed with respect to the Project or any portion thereof without the prior written consent of the City.

**[Signature Page Follows]**

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE VOLUNTARILY SET THEIR HANDS AND SEALS ON THIS AGREEMENT, AND BY DOING SO HAVE ACKNOWLEDGED THAT THEY HAVE READ THE FOREGOING INSTRUMENT IN ITS ENTIRETY AND ACKNOWLEDGE THAT THE SAME IS A LEGALLY BINDING AGREEMENT, THAT THEY HAVE CONSCIOUSLY EXECUTED THE SAME AS THEIR OWN FREE AND VOLUNTARY ACT AND DO HEREBY SUBMIT TO AND ACKNOWLEDGE THE TERMS AND CONDITIONS HEREIN.**

**[Wood Dale Development, LLC]**

By: \_\_\_\_\_  
Name:  
Its:

**CITY OF WOOD DALE,  
AN ILLINOIS MUNICIPAL  
CORPORATION**

By: \_\_\_\_\_  
Nunzio Pulice, Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_

DRAFT



DRAFT



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**PUBLIC HEALTH, SAFETY, JUDICIARY & ETHICS**  
**COMMITTEE MINUTES**

Committee Date: July 8, 2021  
Present: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino,  
Susmarski & Woods  
Absent: None  
Also Present: Mayor Pulice, Treasurer Porch, Clerk Curiale, Police Chief Vesta,  
B. Wilson, E. Cage, A. Lange  
Meeting Convened at: 8:35 p.m.

**APPROVAL OF MINUTES:**

Ald. Sorrentino made a motion, seconded by Ald. Ames, to approve the Minutes of the May 13, 2021 meeting as presented. A roll call vote was taken with all members voting aye; motion carried.

**REPORT & RECOMMENDATION:**

REQUEST FOR ADDITIONAL CLASS GS LIQUOR LICENSE

**DISCUSSION:**

Chief Vesta reported the Mayor received a letter from the Shell gas station at 110 E. Irving Park asking to have a Class GS liquor license made available. The GS liquor license is specifically for gas stations, and allows the sale of alcoholic liquor for consumption off-premises, and is limited in the amount of floor space that can be dedicated to liquor sales. There are currently four GS licenses throughout the City. The current process allows Council to approve the amount of licenses, and the Mayor to approve the businesses to receive them. The applicant was not present for the meeting, so he would like to reach out to her to attend next week's Council Meeting.

**VOTE:**

Ald. Woods made a motion, seconded by Ald. Sorrentino, to approve a Request for an Additional Class GS Liquor License. A roll call vote was taken with the following results:

Ayes: Ald. Ames, Curiale, Jakab, Messina, Sorrentino & Susmarski  
Nays: Ald. Catalano and Woods  
Abstained: None  
Motion: Carried

**REPORT & RECOMMENDATION:**

AMENDMENT TO CITY CODE SECTION 15.2005 OF THE MUNICIPAL CODE OF THE CITY OF WOOD DALE RELATING TO PROHIBITED PARKING

**DISCUSSION:**

Chief Vesta explained there was an issue on one street specifically and it could also occur on other streets in the future. He reviewed the issue at Stoneham and Wood Dale. According to state law and Wood Dale's City Ordinance, parking is allowed once a vehicle is 20' feet beyond a designated crosswalk. Staff is recommending going from a 20' feet setback to 60' feet to make it safe for vehicles coming off Wood Dale Rd. and those traveling down Stoneham. Ald. Susmarski would like to extend it to Elmhurst too due to people parking to visit the memorial at that corner. As with any changes, when first implemented, officers can speak with violators prior to issuing them any citation.

**VOTE:**

Ald. Woods made a motion, seconded by Ald. Sorrentino, to amend the City Code Section 15.2005 for Prohibited Parking on all intersections off the main thoroughfares of Wood Dale Road, Irving Park and Addison Road to a 60' setback for parking off a crosswalk. A roll call vote was taken with the following results:

|            |   |       |
|------------|---|-------|
|            | Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & | Woods |
| Nays:      | None  |       |
| Abstained: | None  |       |
| Motion:    | Carried   |       |

**REPORT & RECOMMENDATION**

AMENDMENT TO CITY CODE SECTION 15.205 OF MUNICIPAL CODE OF CITY OF WOOD DALE RELATING TO EXEMPTIONS FOR COMPLIANCE WITH TRAFFIC REGULATIONS DURING LAW ENFORCEMENT ACTIVITIES

**DISCUSSION:**

Chief Vesta reported there are certain exceptions in state law regarding traffic laws while in pursuit of suspected violators and other situations. There are some locations in town that include the new trail ways close to major thoroughfares to conduct traffic enforcement activities or to observe and do surveillance. A few people raised questions about where officers were parking and the City Attorney has already addressed concerns with those who complained. Staff wants to put into City Code that during certain pursuit of violators, officers can park on locations and pathways and trails for enforcement. Adding a paragraph to the

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exemptions to traffic code that indicates police are authorized to park on pathways and trails if done in a safe manner.

**VOTE:**

Ald. Woods made a motion, seconded by Ald. Jakab, to approve an Amendment to City Code Section 15.205 of the Municipal Code of the City of Wood Dale Relating to the Exemptions for Compliance with Traffic Regulations during Law Enforcement Activities. A roll call vote was taken with the following results:

|            |   |
|------------|---|
| Ayes:      | Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods |
| Nays:      | None  |
| Abstained: | None  |
| Motion:    | Carried   |

**ITEMS TO BE CONSIDERED AT FUTURE MEETINGS:**

- PD HVAC – Summer
- Oak Meadows Drive Parking – Summer

**ADJOURNMENT:**

Ald. Sorrentino made a motion to adjourn at 8:56 p.m., seconded by Ald. Woods. A roll call vote was taken with all members voting aye. Motion carried.

*Minutes taken by Eileen Schultz*



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: Police Department HVAC Replacement  
Staff Contact: Greg Vesta, Chief of Police  
Department: Police

**TITLE:** Approval of an Agreement with CTS Group for the Police Department HVAC Repair and Replacement in an Amount Not to Exceed \$484,744

### **RECOMMENDATION:**

Approve an agreement authorizing the City to work with CTS Group for the repair and replacement of the HVAC system in the Police Department, in an amount not to exceed \$484,744.

### **BACKGROUND:**

On May 13, 2021, City Council gave approval for staff to utilize the services of an Energy Service Company (ECSSO) to design, bid, and return to City Council with a repair and/or replacement of the Police Department HVAC components, which is experiencing failures in multiple facets.

In the current Capital Improvement Program budget, City Council approved \$495,000 for a full system replacement.

### **ANALYSIS:**

The CTS Group has done a complete engineering review of the current system, designed the repair and replacement of certain components, solicited bids from local vendors, and has proposed a guaranteed pricing of \$484,744.

The CTS Group will be present at the committee meeting to review the current conditions, provide information to Council on the needs of the system going forward to ensure viability for the foreseeable future.

Their presentation will provide further information regarding the specific items to be replaced, but will eliminate the problems of two current boilers being out of operation, a water pump that is no longer functioning, pneumatic tubing that is literally crumbling and causing system failures, the replacement of condensing and air handling units in three locations, and the move to a new digital control system.

With City Council's approval, staff will sign the contract with the CTS Group, and begin scheduling of the project to be completed during the temperature weather during the fall. It is anticipated that construction could begin in September and be completed within 4-6 weeks.

The City Attorney has previously reviewed the contract and appropriate modifications were made.

**DOCUMENTS ATTACHED**

- ✓ Draft Resolution
- ✓ Contract

**RESOLUTION NO. R-21-\_\_**

**A RESOLUTION AUTHORIZING THE CITY OF WOOD DALE TO ENTER INTO A CONTRACT WITH THE CTS GROUP FOR THE POLICE DEPARTMENT HVAC REPAIR AND REPLACEMENT IN AN AMOUNT NOT TO EXCEED \$484,744**

**WHEREAS**, the City of Wood Dale (hereinafter referred to as the “City”) is a duly organized and existing body politic and corporate governed by the provisions of the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*, and its own duly adopted Municipal Code; and

**WHEREAS**, the City is authorized and empowered under the Illinois Municipal Code, and its Ordinances adopted pursuant thereto, to enter into agreements and to contract for goods and services; and

**WHEREAS**, the Mayor and the City Council of the City seek to ensure that the City is run effectively and efficiently; and

**WHEREAS**, most of the current HVAC system inside the police department is over 30 years old; and

**WHEREAS**, the current HVAC system inside the police department is experiencing many failures and is incapable of providing consistent temperate atmosphere within the building; and

**WHEREAS**, the cost to frequently contact a service provider to keep the system functional is cost-prohibitive going forward; and

**WHEREAS**, the Mayor and the City Council of the City, seeks the CTS Group for the repair and replacement of the Police Department HVAC system; and

**WHEREAS**, these services are necessary to maintain and promote an effective and efficient City Government; and

**WHEREAS**, after diligent review of the qualifications and services of the CTS Group, the Mayor and the City Council find CTS Group is the most qualified firm to perform the duties sought by the City; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WOOD DALE, DUPAGE COUNTY, AN ILLINOIS CORPORATION**, as follows:

**SECTION 1:** The recitals set forth above are incorporated herein and made a part hereof.

**SECTION 2:** The Mayor is authorized to execute said Agreement on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.

**SECTION 3:** The City Manager, staff and/or the City Attorney shall take the steps necessary to put the terms and conditions of the Agreement into effect.

**SECTION 4:** That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

**SECTION 5:** That this Resolution shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED this 19<sup>th</sup> day of August, 2021.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED this 19<sup>th</sup> day of August, 2021.

SIGNED: \_\_\_\_\_  
Annunziato Pulice, Mayor

ATTEST: \_\_\_\_\_  
Lynn Curiale, City Clerk

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**CTS  
AGREEMENT**

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CUSTOMER NAME: City of Wood Dale  
DATE OF SUBMISSION: August 12, 2021



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| ATTACHMENT G | FORM ALLOCATION OF SECTION 179D DEDUCTION |

**Note Regarding Modifications Made to this Agreement:** Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be made illegible. The parties should be clearly aware of the material deleted from the standard form. **Do not make any modifications to this Agreement unless approval to do so has been granted. Changes may be made only by deletion as explained above, or, by addendum.**

## ARTICLE 1

### GENERAL PROVISIONS

**1.1** This Agreement, including all Attachments, Exhibits, and Schedules referenced herein (hereinafter the "Agreement") dated August 12, 2021 (the "Effective Date") by and between Control Technology & Solutions, LLC d/b/a CTS Group ("CTS"), a Missouri Corporation, with a principal place of business at 16647 Chesterfield Grove Road, Suite 200, Chesterfield, MO 63005, and the City of Wood Dale ("CUSTOMER") with a principal place of business at 404 North Wood Dale, Wood Dale, 60191. (collectively the "Parties").

**1.2** EXTENT OF AGREEMENT: This Agreement, including all attachments and exhibits hereto, represents the entire agreement between CUSTOMER and CTS and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both CUSTOMER and CTS. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order issued by CUSTOMER, which relates to the subject matter of this Agreement.

**1.3** As used in this Agreement, the term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CTS to fulfill CTS's obligations, as described in Attachment A and otherwise set forth in the Contract Documents. The Work may constitute the whole or a part of the Project. The Work specifically excludes certain design and construction, which are the subject of separate agreements between CUSTOMER and parties other than CTS.

**1.4** The Project is the total construction of which the Work performed by CTS under this Agreement may be the whole or a part.

**1.5** The Contract Documents consist of this Agreement, its attachments, exhibits, schedules, and addenda.

**1.6** Installation Schedule means that schedule set out in Attachment B describing the Parties' intentions respecting the times by which the components or aspects of the Work therein set forth shall be installed and/or ready for acceptance or beneficial use by CUSTOMER.

## ARTICLE 2

### CTS'S RESPONSIBILITIES

#### **2.1** CTS Services

**2.1.1** CTS shall be responsible for construction of the Project.

**2.1.2** CTS will assist in securing permits necessary for the Work. CUSTOMER shall pay such proper and legal fees to public officers and others as may be necessary to the due and faithful performance of the Work and which may arise incidental to the fulfilling of these specifications.

#### **2.2** Responsibilities with Respect to the Work

**2.2.1** CTS will provide construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Work.

**2.2.2** CTS shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations. If CTS damages property not needed for the Work, CTS shall repair the property to its pre-existing condition unless CUSTOMER directs otherwise. At the completion of the Work, CTS shall remove waste material supplied by CTS under this Agreement as well as all its tools, construction equipment, machinery and surplus material. CTS shall dispose of all waste materials or rubbish caused by its operations; provided, that unless otherwise specifically agreed to in this Agreement, CTS shall not be responsible for disposal of toxic or hazardous materials

removed from the facilities, such as fluorescent lights, potential polychlorinated biphenyl containing light ballasts and mercury-containing controls, but shall store those materials neatly at a location designated by CUSTOMER.

**2.2.3** CTS shall give all notices and comply with all laws and ordinances legally enacted as of the date of execution of the Agreement governing the execution of the Work. Provided, however, that CTS shall not be responsible nor liable for the violation of any code, law or ordinance caused by CUSTOMER or existing in CUSTOMER's property prior to the commencement of the Work.

**2.2.4** CTS shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while providing the Work, and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work. It is understood and agreed, however, that CTS shall have no responsibility for elimination or abatement of health or safety hazards created or otherwise resulting from activities at the site of the Work carried on by persons not in a contractual relationship with CTS, including CUSTOMER, CUSTOMER's contractors or subcontractors, CUSTOMER's tenants or CUSTOMER's visitors. CUSTOMER agrees to cause its contractors, subcontractors and tenants to comply fully with all applicable federal, state and municipal laws and regulations governing health and safety and to comply with all reasonable requests and directions of CTS for the elimination or abatement of any such health or safety hazards at the site of the work.

### **2.3 Patent Indemnity**

**2.3.1** CTS shall, at its expense, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware manufactured and provided by CTS, provided that: 1. Such alleged infringement consists only in the use of such hardware by itself and not as part of, or in combination with, any other devices, parts or software not provided by CTS hereunder; 2. CUSTOMER gives CTS immediate notice in writing of any such suit and permits CTS, through counsel of its choice, to answer the charge of infringement and defend such suit; and 3. CUSTOMER gives CTS all needed information, assistance and authority, at CTS's expense, to enable CTS to defend such suit.

**2.3.2** If such a suit has occurred, or in CTS's opinion is likely to occur, CTS may, at its election and expense: obtain for CUSTOMER the right to continue using such equipment; or replace, correct or modify it so that it is not infringing; or remove such equipment and grant CUSTOMER a credit therefore, as depreciated.

**2.3.3** In the case of a final award of damages in any such suit, CTS will pay such award. CTS shall not, however, be responsible for any settlement made without its written consent.

**2.3.4** This article states CTS's total liability and CUSTOMER's sole remedy for any actual or alleged infringement of any patent by the hardware manufactured and provided by CTS hereunder. In no event shall CTS be liable for any indirect, special or consequential damages resulting from any such actual or alleged infringement, except as set forth in this section 2.3.

### **2.4 Warranties and Completion**

**2.4.1** CTS warrants CUSTOMER good and clear title to all equipment and materials furnished to CUSTOMER pursuant to this Agreement free and clear of liens and encumbrances. CTS hereby warrants that all such equipment and materials shall be of good quality and shall be free from defects in materials and workmanship, including installation and setup, for a period of one (1) year from the date of beneficial use or substantial completion of the equipment or portion of the Work in question, provided that no repairs, substitutions, modifications, or additions have been made, except by CTS or with CTS's written permission, and provided that after delivery such equipment or materials have not been subjected by non-CTS personnel to accident, neglect, misuse, or use in violation of any instructions supplied by CTS. CTS's sole liability hereunder shall be to repair promptly or replace defective equipment or materials, at CTS's option and at CTS's expense. The limited warranty contained in this Section 2.4.1 shall constitute the exclusive remedy of CUSTOMER and the exclusive liability of CTS for any breach of any warranty related to the equipment and materials furnished by CTS pursuant to this Agreement.

**2.4.2** In addition to the warranty set forth in Section 2.4.1 above, CTS shall, at CUSTOMER's request, assign to CUSTOMER any and all manufacturer's or installer's warranties for equipment or materials not manufactured by CTS and

provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the one (1) year limited warranty set forth in Section 2.4.1.

**2.4.3** The warranties set forth herein are exclusive, and CTS expressly disclaims all other warranties, whether written or oral, implied or statutory, including but not limited to, any warranties of merchantability and fitness for a particular purpose, with respect to the equipment and materials provided hereunder. CTS shall not be liable for any special, indirect, incidental or consequential damages arising from, or relating to, this limited warranty or its breach.

**2.4.4** CTS's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by CTS, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

## **2.5 Hazardous Materials**

**2.5.1** CTS and its subcontractors shall not be required to handle, remove, come into contact with, dispose of, or otherwise work with hazardous materials existing on the project site at the date of this Agreement or resulting, either directly or indirectly, from any acts or omissions of CUSTOMER, its employees, agents or assigns, or any of its other contractors or subcontractors. "Hazardous materials" as used herein includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities. "Hazardous materials" shall also include fungus and mold. If, during the performance of the Work, the presence of hazardous materials is discovered or reasonably suspected, CTS shall notify CUSTOMER of such discovery or suspicion and shall be permitted to immediately cease all work which requires contact with or exposure to such hazardous materials, until the CUSTOMER has made arrangements for the removal of the same. CTS shall be entitled to an extension of the Contract Time for ceasing work pursuant to this Section.

**2.5.2** CUSTOMER shall indemnify, defend, and hold CTS and its respective officers, directors, employees, agents and subcontractors (collectively the "Indemnified Parties"), harmless from, against, and in respect of any and all rights, claims, demands, liabilities, obligations, orders, assessments, interest, penalties, fines, settlement payments, costs, expenses and damages, including, without limitation, reasonable legal fees and out-of-pocket expenses ("Damages") imposed upon or incurred by any Indemnified Party and that arise from claims asserted by third parties or by CUSTOMER concerning any Hazardous Materials; provided that the Damages are not the direct result of any act or omission of CTS or its agents.

**2.5.3** Unless prior to the execution of this Agreement, CTS received written notification from CUSTOMER of the existence of Hazardous Materials on the site, and said notice included a description of the Hazardous Materials, and the quantity and location of the Hazardous Materials, CUSTOMER is hereby representing to CTS that CUSTOMER is not aware of any Hazardous Materials present at the site.

**2.5.4** If the structure(s) where the Contract Work is to be performed was built before 1978, CUSTOMER understands that it may contain lead paint. CUSTOMER also understands that the only way to know whether lead paint is present is to have one or more paint samples in the work area tested. CUSTOMER authorizes those tests to be done by CTS and agrees to pay CTS for the costs of those tests, in addition to the Contract Price. Alternatively, as a condition of accepting this Contract, CUSTOMER agrees to provide CTS with documentation demonstrating, to CTS's reasonable satisfaction, that: (1) the areas where the Contract Work is to be performed has been tested and determined to be lead free by a certified risk assessor, certified lead inspector or certified renovator; (2) the areas where the Contract Work is to be performed is paint free; and/or (3) the areas where the Contract Work is to be performed were built after 1977.

## **ARTICLE 3**

### **CUSTOMER'S RESPONSIBILITIES**

**3.1** CUSTOMER shall provide CTS full information regarding the requirements for the Work.

**3.2** CUSTOMER shall designate a representative who shall be fully acquainted with the Work, and who has authority to approve changes in the scope of the Work and render decisions promptly.

**3.3** CUSTOMER shall furnish to CTS all information regarding legal limitations, utility locations and other information reasonably pertinent to this Agreement, the Work and the Project.

**3.4** CUSTOMER shall secure and pay for all necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including charges for legal and auditing services.

**3.5** If CUSTOMER becomes aware of any fault or defect in the Work, it shall give prompt written notice thereof to CTS and if such notice is not promptly given, CUSTOMER shall be responsible for any additional repair or remedial costs which could have been avoided if such notice had been promptly given.

**3.6** The services and information required by the above paragraphs shall be furnished with reasonable promptness at CUSTOMER's expense and CTS shall be entitled to rely upon the accuracy and the completeness thereof.

**3.7** Prior to the commencement of the Work and at such future times as CTS shall reasonably deem appropriate, CUSTOMER shall furnish evidence in a form satisfactory to CTS that sufficient funds are available and committed to pay for the Work. Unless such evidence is furnished, CTS is not required to commence or continue any Work. Further, if CUSTOMER does not provide such evidence, CTS may stop work upon fifteen (15) days notice to CUSTOMER. The failure of CTS to insist upon the providing of this evidence at any one time shall not be a waiver of CUSTOMER's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of CTS's right to request or insist that such evidence be provided at a later date.

**3.8** CUSTOMER shall comply with all applicable federal, state and municipal laws and regulations governing occupational health and safety in the areas where CTS will perform services and/or perform the Work.

CUSTOMER represents and warrants that, except as otherwise disclosed in this Agreement, in the areas where CTS will undertake Work or provide services, there are no: (a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components, or (ii) otherwise located in the work area, including asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc.; (b) situations subject to special precautions or equipment required by federal, state or local health or safety regulations; or (c) unsafe working conditions. CUSTOMER shall notify CTS of any changes or updates that occur during the course of the Agreement. If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by CTS or others and provide an unsafe condition for the performance of the Work or services, the discovery of the material, situation or condition shall constitute a cause beyond CTS's reasonable control and CTS shall have the right to cease or not commence the Work until the area has been made safe by CUSTOMER or CUSTOMER's representative, at CUSTOMER's expense.

To the fullest extent allowed by law, customer shall indemnify and hold CTS harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs and costs associated with delay or work stoppage, that in any way results from or arises under the breach of the representations and warranties in this section, the existence of mold or a hazardous substance at a site, or the occurrence or existence of the situations or conditions described in this section, whether or not customer provides CTS advance notice of the existence or occurrence and regardless of when the hazardous substance or occurrence is discovered or occurs. This indemnification shall survive termination of this agreement for whatever reason. Nothing in this section shall be construed to require that customer indemnify and hold harmless CTS from claims and costs resulting from the negligent use by CTS of any hazardous substance brought to the site by CTS (and customer acknowledges that CTS may bring to the site lubricants or other materials that are routinely used in performing maintenance and that may be classified as hazardous).

**3.9** In addition to the price set forth in Article 6 of this Agreement, CUSTOMER shall pay any present and future taxes or any other governmental charges now or hereafter imposed by existing or future laws with respect to the sale, transfer, use, ownership or possession of the Work provided hereunder, excluding taxes on CTS's net income.

**3.10** CTS shall be entitled to rely on the accuracy of the information furnished by CUSTOMER. The CUSTOMER shall furnish information and services required of CUSTOMER by the Contract Documents with reasonable promptness.

#### **ARTICLE 4**

#### **SUBCONTRACTS**

4.1 At its exclusive option, CTS may subcontract some or all of the Work.

4.2 A Subcontractor is a person or entity who has a direct contract with CTS to provide work, labor and materials in connection with the Work. The term Subcontractor does NOT include any separate contractors employed by CUSTOMER or such separate contractors' subcontractors.

4.3 For the purposes of this Agreement, no contractual relationship shall exist between CUSTOMER and any Subcontractor. CTS shall be responsible for the management of its Subcontractors in their performance of their Work.

4.4 CUSTOMER shall not hire any of CTS's Subcontractors without the prior written approval of CTS.

## ARTICLE 5

### INSTALLATION AND ACCEPTANCE

5.1 The Work to be performed under this Agreement shall be commenced and substantially completed as set forth in the Installation Schedule attached hereto as Attachment B.

5.2 If CTS is delayed at any time in the progress of performing its obligations under this Agreement by any act of neglect of CUSTOMER or of any employee or agent of CUSTOMER or any contractor employed by CUSTOMER; or by changes ordered or requested by CUSTOMER in the Work performed pursuant to this Agreement; or by labor disputes, fire, unusual delay in transportation or deliveries, adverse weather conditions or other events or occurrences which could not be reasonably anticipated; or unavoidable casualties; or by any pandemic, international, national or regional health crisis or condition or any federal, state or local directive, declaration of emergency or order to suspend, shut down or suspend business in general or the Work in particular, resulting from said pandemic or crisis, that impacts the provision of labor or interferes with CTS's or any of CTS's subcontractor's ability to procure materials, supplies or equipment, or that otherwise disrupts or shuts down the jobsite, either temporarily or for an extended duration ("Pandemic Delay"); or any other problem beyond CTS's reasonable control (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay shall be extended by the period of any delay actually incurred as a result thereof. If any delay, or cumulative delays, within CUSTOMER's control, extends beyond ten (10) days, CUSTOMER shall reimburse CTS for all additional costs resulting therefrom. CTS shall be entitled to additional compensation for any added costs associated with the performance of the Work caused by any Pandemic Delay.

5.3 CTS shall provide Delivery and Acceptance Certificates in a form acceptable to CUSTOMER and CTS (the "Delivery and Acceptance Certificates") for the Work provided pursuant to the Schedule identified in Attachment F. Upon receipt of each Delivery and Acceptance Certificate, CUSTOMER shall promptly inspect the Work performed by CTS identified therein and execute each such Delivery and Acceptance Certificate as soon as reasonably possible, but in no event later than ten (10) days after delivery of the same by CTS, unless CUSTOMER provides CTS with a written statement identifying specific material performance deficiencies that it wishes CTS to correct. CTS will use reasonably diligent efforts to correct all such material deficiencies and will give written notice to CUSTOMER when all such items have been corrected. The Parties intend that a final Delivery and Acceptance Certificate will be executed for the Work as soon as all Work is installed and operating. Execution and delivery by CUSTOMER of such final Delivery and Acceptance Certificate with respect to the Work shall constitute "Final Acceptance" of such Work performed by CTS pursuant to the Installation Schedule.

## ARTICLE 6

### PRICE AND PAYMENT

#### 6.1 Price

6.1.1 The price for the Work is four hundred eighty-four thousand, seven hundred forty-four Dollars (\$484,744), subject to the adjustments set forth in Articles 5 and 7.

**6.1.2** The price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any changes in or to applicable laws, codes and regulations affecting the cost of the Work shall be the responsibility of CUSTOMER and shall entitle CTS to an equitable adjustment in the price and schedule.

**6.1.3** The price will be modified for delays caused by CUSTOMER and for Changes in the Work, all pursuant to Article 7.

**6.1.4** The license fees for all licensed software are included in the price to be paid by CUSTOMER as identified in this Article 6.

**6.1.5** If, at any time, CUSTOMER requests overtime work which requires overtime or premium pay, CTS shall be entitled to add such premium or overtime pay to the Contract Price, plus CTS's overhead and profit.

**6.1.6** The Contract Price does not include the items of work specifically excluded in Attachment A. If CUSTOMER requests CTS to perform any of the work expressly excluded in said Attachment, the cost for this additional work, plus CTS's overhead and profit, shall be added to the Contract Price.

## **6.2 Payment**

**6.2.1** Upon execution of this Agreement, CUSTOMER shall pay or cause to be paid to CTS the full price for the Work, in accordance with the Payment Schedule, Attachment C. Payment shall be made net forty-five (45) days of invoice date.

**6.2.2** Payments due and unpaid shall bear interest from the date payment is due at the rate of 1 ½% per month, compounded monthly. In the event that Customer failed to pay CTS any sums due, Customer shall pay CTS all attorney's fees incurred by CTS in collecting amounts owed to CTS under this Agreement. If a progress payment is not paid by the due date, CTS reserves the right (without further notice) to immediately stop work until the progress payment then due is made, increased by the amount of CTS' costs of shutdown, delay and startup and, in such event, CTS will not be liable or responsible for any damages, costs or delays whatsoever due to such work stoppage. CTS reserves the right (without further notice) to terminate this Agreement altogether if work is stopped for thirty (30) or more days (whether or not consecutive days) because of a failure to make progress payments, and, in such event, also reserves the right to recover payment for all work executed and losses from stoppage of the work including reasonable overhead and profit.

## **ARTICLE 7**

### **CHANGES IN THE PROJECT**

**7.1** A Change Order is a written order signed by CUSTOMER and CTS authorizing a change in the Work or adjustment in the price, or a change to the Installation Schedule described in Attachment B. Each Change Order shall describe the change in the work, the amount of adjustment, if any, to the Contract Price, and the extent of any adjustment to the completion date.

**7.2** CUSTOMER may request CTS to submit proposals for changes in the Work. Unless otherwise specifically agreed to in writing by both parties, if CTS submits a proposal pursuant to such request but CUSTOMER chooses not to proceed, CUSTOMER shall issue a Change Order to reimburse CTS for any and all costs incurred in preparing the proposal.

### **7.3 Claims for Concealed or Unknown Conditions**

The Contract Price has been based on normal site conditions, without allowance for any additional work that might be caused by unanticipated site conditions. If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract

Price and Installation Schedule shall be made by a Change Order. Said adjustment in Contract Price shall include CTS's overhead and profit. If agreement cannot be reached by the Parties, the party seeking an adjustment in the Price or Installation Schedule may assert a claim in accordance with Paragraph 7.4.

**7.4** If CTS wishes to make a claim for an increase in the Contract Price or an extension in the Installation Schedule it shall give CUSTOMER written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. This notice shall be given by CTS before proceeding to execute the Work, except in an emergency endangering life or property, in which case CTS shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay. Increases based upon design and estimating costs with respect to possible changes requested by CUSTOMER shall be made within a reasonable time after the decision is made not to proceed with the change. No such claim shall be valid unless so made. If CUSTOMER and CTS cannot agree on the amount of the adjustment in the Price, or the Installation Schedule, it shall be determined pursuant to the provisions of Article 12. Any change in the Price or the Installation Schedule resulting from such claim shall be authorized by Change Order.

**7.5 Emergencies**

In any emergency affecting the safety of persons or property, CTS shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Price or extension of time claimed by CTS on account of emergency work shall be determined as provided in Section 7.4.

**7.6 Minor Changes**

CTS shall, without CUSTOMER's approval, have the authority to make minor changes in the Work so long as they do not result in a material alteration or modification or cause an adjustment to the Contract Price or an extension of the Contract Time.

**ARTICLE 8**

**INSURANCE, INDEMNITY, WAIVER OF SUBROGATION, AND LIMITATION OF LIABILITY**

**8.1 Indemnity**

**8.1.1** CTS agrees to indemnify and hold CUSTOMER, and CUSTOMER's consultants, agents and employees harmless from all claims for bodily injury and property damages [other than the Work itself and other property insured under Paragraph 8.4] to the extent such claims result from or arise under CTS's negligent actions or willful misconduct in its performance of the Work, nothing in this article shall be construed or understood to alter the limitations of liability contained in this article, article 2, or the indemnification contained in section 3.8. Except as otherwise provided herein, CTS's obligation, if any, to indemnify the CUSTOMER does not extend to losses sustained in whole or in part as a result of the CUSTOMER's (or its agent's) acts or omissions.

**8.1.2** CUSTOMER shall indemnify and hold harmless CTS and CTS's consultants, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or resulting from, any act or omission of CUSTOMER or CUSTOMER's contractors, consultants, agents or employees.

**8.1.3** CUSTOMER shall require any other contractor who may have a contract on this project with CUSTOMER to perform work in the areas where Work will be performed under this Agreement to agree to indemnify CUSTOMER and CTS and hold them harmless from all claims for bodily injury and property damage [other than property insured under Paragraph 8.4] that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to CTS.

**8.2 Contractor's Liability Insurance**

**8.2.1** CTS shall purchase and maintain such insurance as will protect it from claims that may arise out of or result from CTS's operations under this Agreement.



**8.2.2** The Commercial General Liability Insurance shall include premises-operations (including explosion, collapse and underground coverage), elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

**8.2.3** CTS's Commercial General and Automobile Liability Insurance, as required by Subparagraphs 8.2.1 and 8.2.2, shall be written for not less than limits of liability as follows:

- (a) **Commercial General Liability**
  - Combined Single Limit
  - \$ 1,000,000 Each Occurrence
  
  - \$ 2,000,000 Product & Completed Operations
  - Aggregate
  
  - \$ 2,000,000 General Aggregate
  - Other Than Products & Completed Operations
  
- (b) **Commercial Automobile Liability**                      Combined Single Limit
  - \$ 1,000,000 Each Occurrence

**8.2.4** CTS shall maintain at all times during the performance of the Work and Services hereunder, Workman's Compensation Insurance in accordance with the laws of the State in which the Work is performed.

**8.3. CUSTOMER's Liability Insurance**

**8.3.1** CUSTOMER shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims that may arise from operations under this Agreement.

**8.4 Insurance to Protect Project**

**8.4.1** CUSTOMER shall purchase and maintain all risk full cost replacement property insurance in a form acceptable to CTS for the length of time to complete the Project. This insurance shall include as named additional insureds CTS and CTS's Subcontractors and Sub-subcontractors and shall include, at a minimum, coverage for fire, windstorm, flood, earthquake, theft, vandalism, malicious mischief, transit, collapse, testing, and damage resulting from defective design, workmanship, or material. CUSTOMER will increase limits of coverage, if necessary, to reflect estimated replacement costs. CUSTOMER will be responsible for any co-insurance penalties or deductibles. If the Work covers an addition to or is adjacent to an existing building, CTS and its Subcontractors and Sub-subcontractors shall be named additional insureds under CUSTOMER's Property Insurance covering such building and its contents.

**8.4.1.1** If CUSTOMER finds it necessary to occupy or use a portion or portions of the Facilities prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by CUSTOMER and CTS and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of CTS and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

**8.4.2** CUSTOMER shall purchase and maintain such insurance as will protect CUSTOMER and CTS against loss of use of CUSTOMER's property due to those perils insured pursuant to Subparagraph 8.4.1. Such policy will provide coverage for expenses of expediting materials, continuing overhead of CUSTOMER and CTS, necessary labor expense including overtime, loss of income by CUSTOMER and other determined exposures. Exposures of CUSTOMER and CTS shall be determined by mutual agreement and separate limits of coverage fixed for each item.

**8.4.3** CUSTOMER shall provide Certificate(s) of Insurance to CTS before work on the Project begins. All insurance coverage(s) must be with a carrier rated A or better by one of the National Insurance Rating Agencies such as A.M. Best. CTS will be given sixty (60) days notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

**8.5 Property Insurance Loss Adjustment**

**8.5.1** Any insured loss shall be adjusted with CUSTOMER and CTS and made payable to CUSTOMER and CTS as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

**8.5.2** Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with an arbitration award pursuant to Article 12. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted to arbitration pursuant to Article 12.

**8.6 Waiver of Subrogation**

**8.6.1** CUSTOMER and CTS waive all rights against each other, Architects and Engineers, Subcontractors and Sub-subcontractors for damages caused by perils covered by insurance provided under Paragraph 8.4, except such rights as they may have to the proceeds of such insurance held by CUSTOMER and CTS as trustees. CTS may require similar waivers from all Subcontractors and Sub-subcontractors.

**8.6.2** CUSTOMER and CTS waive all rights against each other, Architects and Engineers, Subcontractor and Sub-subcontractors for loss or damage to any equipment used in connection with the Project, which loss is covered by any property insurance. CTS may require similar waivers from all Subcontractors and Sub-subcontractors.

**8.6.3** CUSTOMER waives subrogation against CTS, Subcontractors and Sub-subcontractors on all property and consequential loss policies carried by CUSTOMER on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

**8.6.4** If the policies of insurance referred to in this Paragraph 8.6 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

**8.7 Limitation of Liability**

**8.7.1** In no event shall CTS be liable for any special, incidental, indirect, speculative, remote, or consequential damages arising from, relating to, or connected with the work, equipment, materials, or any goods or services provided hereunder. The CUSTOMER waives claims against CTS for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by CUSTOMER for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

**ARTICLE 9**

**TERMINATION OF THE AGREEMENT**

**9.1** If CTS defaults in, or fails or neglects to carry forward the Work in accordance with this Agreement, CUSTOMER may provide notice in writing of its intention to terminate this Agreement to CTS. If CTS, following receipt of such written notice, neglects to cure or correct the identified deficiencies within thirty (30) business days, CUSTOMER may provide a second written notice. If CTS has not, within thirty (30) business days after receipt of such notice, acted to remedy and make good such deficiencies, CUSTOMER may terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expeditiously. If the unpaid balance of the contract sum exceeds the expense of finishing the Work, the excess shall be paid to CTS, but if the expense exceeds the unpaid balance, CTS shall pay the difference to CUSTOMER.

**9.2** If CUSTOMER fails to make payments as they become due, or otherwise defaults or breaches its obligations under this Agreement, CTS may give written notice to CUSTOMER of CTS's intention to terminate this Agreement. If, within seven (7) days following receipt of such notice, CUSTOMER fails to make the payments then due, or otherwise fails to cure or perform its obligations, CTS may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

**ARTICLE 10**

**ASSIGNMENT**

**10.1** Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other party. Such consent shall not be reasonably withheld, except that CTS may assign to another party the right to receive payments due under this Agreement. CTS may enter into subcontracts for the Work without obtaining CUSTOMER's consent.

**ARTICLE 11**

**MISCELLANEOUS PROVISIONS**

**11.1** The Table of Contents and headings in this Agreement are for information and convenience only and do not modify the obligations of this Agreement.

**11.2 Confidentiality.** As used herein, the term "CONFIDENTIAL INFORMATION" shall mean any information in readable form or in machine readable form, including software supplied to CUSTOMER by CTS that has been identified or labeled as "Confidential" and/or "Proprietary" or with words of similar import. CONFIDENTIAL INFORMATION shall also mean any information that is disclosed orally and is designated as "Confidential" and/or "Proprietary" or with words of similar import at the time of disclosure and is reduced to writing, marked as "Confidential" and/or "Proprietary" or with words of similar import, and supplied to the receiving party within ten (10) days of disclosure.

All rights in and to CONFIDENTIAL INFORMATION and to any proprietary and/or novel features contained in CONFIDENTIAL INFORMATION disclosed are reserved by the disclosing party; and the party receiving such disclosure will not use the CONFIDENTIAL INFORMATION for any purpose except in the performance of this Agreement and will not disclose any of the CONFIDENTIAL INFORMATION to benefit itself or to damage the disclosing party. This prohibition includes any business information (strategic plans, etc.) that may become known to either party.

Each party shall, upon request of the other party or upon completion or earlier termination of this Agreement, return the other party's CONFIDENTIAL INFORMATION and all copies thereof.

Notwithstanding the foregoing provisions, neither party shall be liable for any disclosure or use of information disclosed or communicated by the other party if the information:

- (a) is publicly available at the time of disclosure or later becomes publicly available other than through breach of this Agreement; or
- (b) is known to the receiving party at the time of disclosure; or
- (c) is subsequently rightfully obtained from a third party on an unrestricted basis; or
- (d) is approved for release in writing by an authorized representative of the disclosing party.

The obligation of this Article shall survive any expiration, cancellation or termination of this Agreement.

**11.3** If any provision is held illegal, invalid or unenforceable, the remaining provisions of this Agreement shall be construed and interpreted to achieve the purposes of the Parties.

**11.4** Risk of loss for all equipment and materials provided by CTS hereunder shall transfer to CUSTOMER upon delivery to CUSTOMER's Facilities from CTS or its Subcontractor and title shall pass upon final acceptance or final payment by CUSTOMER to CTS, whichever occurs later.

**11.5** Final notice or other communications required or permitted hereunder shall be sufficiently given if personally delivered to the person specified below, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To CTS:  
CTS  
Attention: Albert Willis, Vice President - Midwest  
16647 Chesterfield Grove Road, Suite 200  
Chesterfield, MO 63005

To CUSTOMER:  
City of Wood Dale  
404 North Wood Dale Road  
Wood Dale, IL 60191  
Attention: Chief Greg Vesta

**11.6 Waiver.** CTS's failure to insist upon the performance or fulfillment of any of CUSTOMER's obligations under this Agreement shall not be deemed or construed as a waiver or relinquishment of the future performance of any such right or obligation hereunder.

**11.7** If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected hereby and shall be valid and enforceable to the fullest extent permitted by law.

**11.8 Performance/Payment Bond.** CTS shall furnish a performance bond and payment bond covering the construction of the work in an amount equal to the contract price prior to commencement of work in a form acceptable to CUSTOMER.

**11.9** This bond covers only the performance and payment exposure associated with the performance of the construction portion of the work. The energy savings, additional savings, guaranteed savings, savings shortfalls are not under any circumstances covered under this bond or an obligation that the surety is responsible for.

**11.10 Ambiguities.** The parties have each had the opportunity to review and negotiate the terms of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

**11.11 Headings.** The section headings contained herein are intended for convenience and reference only, and are not a part of this Agreement.

**11.12 Authority to Enter into this Contract.** The persons signing the Agreement on behalf of the parties are authorized to execute and accept contracts of this nature.

**11.13 CUSTOMER Representations.** To the extent applicable, the CUSTOMER warrants that it has the necessary power and authority to enter into this Agreement and this Agreement has been duly authorized by its duly elected representatives. This Agreement is a legal, valid and binding obligation of the CUSTOMER.

**ARTICLE 12**  
**LIMIT OF LIABILITY – FIRE AND/OR SECURITY SYSTEMS**

**13.1** To the extent provided for by law, the parties agree that CTS is not an insurer; that the fire and/or security system and/or Service purchased herein is designed only to reduce the risk of loss; that CUSTOMER chose such system and/or Service from several levels of protection offered by CTS; that CTS will not be held liable for any loss, whether in tort or contract, which may arise from the failure of the system and/or Service; and that customer will indemnify, defend and save CTS harmless from any and all loss, claims, actions, causes of actions or expense, including attorneys' fees, arising from the actual or alleged malfunction or nonfunction of the system and/or service. The parties further agree that this Agreement shall not confer any rights on the part of any person or entity not a party hereto, whether as a third-party beneficiary or otherwise.

Because it is extremely difficult to assess actual damages arising from the failure of a system and/or service, the parties agree that if any liability is imposed on CTS for damages or personal injury to either customer or any third party, such liability shall be limited to an aggregate amount not to exceed the value of the system installed. This sum shall be paid

either as (i) liquidated damages and not as a penalty, or (ii) a limitation of liability agreed upon by the parties. No suit or action shall be brought against CTS more than one (1) year after the accrual of the cause of action thereof.

**ARTICLE 13**  
**ALLOCATION OF SECTION 179D DEDUCTION  
TO DESIGNER**

**14.1** CUSTOMER acknowledges and represents that the project site where CTS’s Work is to be performed and all building and improvements located on the same are “government-owned buildings” as CUSTOMER is a political subdivision and CUSTOMER owns said property, building and other improvements where the Work is to be performed. CUSTOMER hereby allocates to CTS any and all Section 179D deductions for the Work. CUSTOMER further acknowledges that CTS is the entity that has created and is primarily responsible for the technical specifications for installation of energy efficient work at CUSTOMER’s commercial building property, as described herein. CUSTOMER agrees to complete and execute the “Form for Allocation of Section 179D Deduction”, which is attached hereto as Schedule G and incorporated herein by reference. CUSTOMER also agrees to participate in any analysis, inspection and/or certification required by statute or otherwise deemed necessary by CTS to ensure that CTS receives the Section 179D deduction.

**ARTICLE 14**  
**SUBSEQUENT PHASES OF WORK**

**15.1** Additions and modifications to this Agreement may be made upon the mutual agreement of both parties in writing. The parties contemplate that such modifications may include but are not limited to the installation of additional improvement measures, energy conservation measures, facility improvement measures and operational efficiency improvements or furnishing of additional services within the identified facilities, as well as other facilities owned and operated by the Customer.

If the Work is divided into phases or individual projects for which individual prices have been negotiated, then separate Commencement Dates shall apply to each phase or individual project. These projects, modifications, and modifications to the original scope of Work or Services and may be included as addendums to the Master Agreement.

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**APPROVALS:**

The parties hereby execute this Agreement as of the date first set forth herein by the signatures of their duly authorized representatives:

**Control Technology & Solutions, LLC**

**City of Wood Dale**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## **ATTACHMENT A**

### **SCOPE OF WORK**

CTS has completed the initial design services and solicited pricing from contracting trades for the projects included within the Scope of Work below.

CTS will provide final AS-Built drawings and facilitate all Building Occupancy Permits as needed.

The Scope of Work will be installed in a neat and workmanlike manner in accordance with local codes and ASHRAE standards.

#### **General Requirements:**

CTS will meet the City's intention to have a complete turnkey installation. The bond provided for the construction of the project only covers the performance of materials and workmanship for the completion of said construction work, not the energy guarantee. As-built drawings and O&M manuals will be prepared and submitted before final payment. CTS will provide Owner Training on systems installed. CTS will be responsible for loading and unloading all material for this work and staging on site.

#### **Boiler Upgrades**

Scope of Services to include the following for the Boiler Upgrades in the Wood Dale Police Station:

- CTS will demolish existing (4) boilers, stack assembly and all related equipment
- CTS will supply & install (2) HW boilers with 85% efficiency to meet the current load of the Police Station.
- CTS will supply & install BacNet open protocol for Boilers controls to be tied into the new DDC temperature Control System also supplied by CTS and detailed in the scope below.
- CTS will supply & Install (2) HW pumps (P1 & P2) base mounted 1.5 HP each. One pump is a backup pump.
- CTS will supply & install (1) in-line pump (P3) for freeze protection (when P1 or P2 not running). Size 1/3 HP
- CTS will supply & install (1) in-line pump (P4) for HW fan coils & perimeter radiation system. Size 1.5 HP
- CTS will power wiring disconnect & re-connect equipment in this scope. No new services are included.
- CTS will provide equipment start-up and commissioning.
- CTS will provide one (1) year parts and labor on the entire installation.

#### **AHU Retrofit**

Scope of Services to include the following for the existing AHU Retrofit in the Wood Dale Police Station:

- CTS will supply & install new HW coil
- CTS will supply & install new DX cooling coil, drip pan etc.
- CTS will supply & install new Supply Fan; size 10 HP
- CTS will supply & install new VSD for the supply fan (compatible with BacNet)
- CTS will supply & install new Return Fan; size 5 HP
- CTS will supply & install new VSD for the return fan (compatible with BacNet)
- CTS will supply & install all new bearings, dampers, linkages & related items
- CTS will supply & install new OA damper which will modulate from 0-100% and will be compatible with BacNet controls

- Seal the unit all sides
- CTS will provide equipment start-up and commissioning
- CTS will provide one (1) year parts and labor on entire retrofit.

### **VAV Box Installation (Dispatch Room)**

- CTS will demolish existing Rooftop unit RTU-E currently serving the Dispatch room
- CTS will supply & install new duct and a VAV box for supply air to the Dispatch room (RTU-E 1500 CFM)
- CTS will provide power wiring the VAV box (if necessary)
- CTS will connect the VAV box with the new controls system
- CTS will provide equipment start-up and commissioning
- CTS will provide one (1) year parts and labor on entire retrofit.

### **Condensing Unit Installation**

- CTS will demolish existing condensing unit and related items
- CTS will supply & install new 35 ton condensing unit
- CTS will reuse existing refrigerant piping.
- CTS will provide power wiring disconnect & reconnect the unit
- CTS will connect the unit with the controls system
- CTS will provide equipment start-up and commissioning
- CTS will provide one (1) year parts and labor on entire installation.

### **Rooftop Unit Installation**

- CTS will demolish existing Carrier rooftop unit serving the Police Station Community Center Conference Center (Carrier; 5-ton cooling; 93,000 Btuh heating)
- CTS will supply & install one new heating/cooling package Rooftop unit to serve the community center conference center with the same size.
- CTS will provide power wiring disconnect & reconnect the unit
- CTS will provide equipment start-up and commissioning
- CTS will provide one (1) year parts and labor on entire installation.

### **Temperature Controls Upgrade**

CTS will provide Temperature Controls Upgrade as follows:

#### **Boiler Room Control**

- Mount and wire new Honeywell WEBS N4 Jace web-enabled controller to act as the “head end” field controller. The existing boiler enclosure shall remain. Jace to be connected to building’s internal computer network.
- Provide and install new relays to start/stop HWP-1, 2.
- Provide and install new current donuts for HWP-1, 2 statuses.
- Provide and install new temperature sensors for loop hot water supply, loop hot water return, boiler 1 hot water supply, and boiler 2 hot water supply.
- Provide and install new outside air temperature and humidity sensors.
- Provide and install new differential pressure sensor for loop HWP-1, 2 VFD control.
- Provide and install new hot water reset control valve.
- Provide and install new boiler system enable/disable relay.
- Provide and install new BACnet communications bus to communicate with the two (2) new boilers.

#### VAV Boxes (qty=20)

- Replace the existing Andover VAV controllers with new DDC controllers. All existing actuators, relays, discharge temp sensors and wires shall be reused.
- Replace existing space temperature sensors with new digital display temperature sensors. Existing wire to be reused.

#### AHU (qty=1)

- Provide and install new enclosure.
- Provide and install new DDC enclosure.
- Provide and install new hot water valve.
- Provide and install new relays to enable/disable the DX cooling.
- Provide and install new discharge air temp sensor.
- Provide and install new mixed air temp sensor.
- Provide and install new return air CO2 sensor.
- Provide and install new low limit freeze stat.
- Provide and install new damper actuators for mixed air dampers.
- Provide and install new start/stop relay for supply and return fans.
- Provide and install new current donuts for supply and return fan statuses.
- Provide and install new duct static pressure sensor.

#### New Community Room Rooftop Unit

- Provide and install new enclosure.
- Provide and install new DDC enclosure.
- Provide and install new relays to enable/disable the gas heating.
- Provide and install new relays to enable/disable the DX cooling.
- Provide and install new discharge air temp sensor.
- Provide and install new space temperature sensor.
- Provide and install new damper actuators for mixed air dampers.
- Provide and install new start/stop relay for supply and return fans.
- Provide and install new current donuts for supply and return fan statuses.

#### Commissioning

- Operational verification of all new and existing field components. All existing parts to be reused are expected to be in good working order. Any replacement parts and labor required to replace any existing parts that are found to be defective can be provided for an extra cost.

#### System Front End, Graphics, Training, & Warranty

- CTS will provide and install new PC to act as new BAS main interface. It shall include new BAS software, master schedules, graphics, historical trend logs, etc.. Computer to be connected to building's internal computer network.
- The City shall grant remote access to CTS to the new BAS.
- CTS will create new graphics for entire system including floor plan.
- CTS will provide system Training for City Personnel.
- CTS will provide one (1) year parts and labor for the entire installation.

#### Assumptions

- IP addresses will be provided by the City for the new controllers and PC.
- City to provide CAT5 tie-in locations for each appliance and PC. CAT5 to be supplied and wired by CTS.
- City IT department to work with CTS to accomplish both internal and external (remote) communications to the new system interface.
- All existing communications wire can be reused and is in good working order.

#### **Project Clean Up:**

CTS and our Contractors will be responsible for daily and weekly cleanup of any item resulting from their work. CUSTOMER will notify the CTS if they are delinquent on the clean-up of their items. If CTS' Contractors does not immediately comply, CUSTOMER will have their debris cleaned up and deduct the costs for this work from their contract.



## **ATTACHMENT B**

### **INSTALLATION SCHEDULE**

CTS will provide to the Wood Dale Police Station a Construction Implementation Schedule. The Project Team will mobilize in Fall of 2021.

Project completion date is contingent upon many factors including but not limited to:

- Timely decisions on the part of the City.
- Timely delivery schedules
- Weather conditions at time of project mobilization
- Season change over from cooling to heating season

**A detailed project schedule will be completed by the CTS Project Manager in collaboration with the Wood Dale Police Station.**

**ATTACHMENT C**

**PAYMENT SCHEDULE**

1. The following is the payment schedule for the project.

**Construction of the Project**

The project shall be invoiced on a monthly basis for the work completed and equipment ordered for the project. These progress invoices shall be submitted on the last day of each month. All invoices shall be billed as net thirty (30) days.

A mobilization fee will be due upon contract execution for 10% of the contract price.

ATTACHMENT D

ENERGY GUARANTEE

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1. DEFINITIONS

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

**"Baseline Period"** is the period of time which defines the Baseline Usage and is representative of the facilities' operations, consumption, and usage that is used as the benchmark for determining cost avoidance.

**"Baseline Usage or Demand"** the calculated or measured energy usage (demand) by a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate date, and control strategies, will typically be determined through surveys, inspections, and/or metering at the site.

**"Energy and Operational Cost avoidance Guarantee Practices"** are those practices identified in Attachment E, intended to achieve avoided costs in energy and/or operating expenses.

**"Energy Costs"** may include the cost of electricity and fuels to operate HVAC equipment, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

**"ECM"** the Energy Conservation Measure (ECM) is the installation of equipment or systems, or modification of equipment or systems as described in Attachment A.

**"Facilities"** shall mean those buildings where the energy and operational cost savings will be realized.

**"F.E.M.P."** shall mean the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (DOE/GO-10096-248, February 1996, or later versions). The F.E.M.P. guidelines classify measurement and verification approaches as Option A, Option B, Option C, and Option D. The F.E.M.P. guidelines is based on the International Performance Measurement and Verification Protocol (I.P.M.V.P.) and was written to be fully consistent with it. It is intended to be used by Federal procurement teams consisting of contracting and technical specialists. The focus of F.E.M.P. guidelines is on choosing the M&V option and method most appropriate for specific projects.

**"Financing Document"** refers to that document executed between CUSTOMER and a third-party financing entity providing for payments from CUSTOMER third-party financing entity.

**"Final Project Acceptance"** refers to the CUSTOMER acceptance of the installation of the ECMs as described in Attachment A.

**"First Guarantee Year"** is defined as the period beginning on the first (1<sup>st</sup>) day of the month following the date of Final Retrofit Acceptance of the Work installed and ending on the day prior to the first (1<sup>st</sup>) anniversary thereof.

**"Guarantee Period"** is defined as the period beginning on the first (1<sup>st</sup>) day of the First Guarantee Year and ending on the last day of the final Guarantee Year.

**"Guarantee Year"** is defined as the First Guarantee Year and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

**"Guaranteed Savings"** is defined as the amount of avoided Energy and Operational Costs necessary to pay for the cost of the Work incurred by CUSTOMER in each Guarantee Year (as identified in Section 3.1 hereof).

**"I.P.M.V.P."** International Performance Measurement and Verification Protocol (July 1997, or later version) provides an overview of current best practice techniques available for measurement and verification of performance contracts. This

document is the basis for the F.E.M.P. protocol and is fully consistent with it. The techniques are classified as Option A, Option B, Option C, and Option D.

**"Measurement and Verification Plan"** (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

**"Operational Costs"** shall include the cost of operating and maintaining the facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain Covered Systems and Equipment, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment.

**"Option A"** is a verification approach that is designed for projects in which the potential to perform needs to be verified, but the actual performance can be stipulated based on the results of the "potential to perform and generate savings" verification and engineering calculations. Option A involves procedures for verifying that:

- Baseline conditions have been properly defined; and
- The equipment and/or systems that were contracted to be installed have been installed; and
- The installed equipment components or systems meet the specifications of the contract in terms of quantity, quality, and rating; and
- The installed equipment is operating and performing in accordance with the specifications in the contract and meeting all functional tests; and
- The installed equipment components or systems *continue, during the term of the contract*, to meet the specifications of the contract in terms of quantity, quality and rating, and operation and functional performance.

**"Option B"** is for projects in which the potential to perform and generate Savings needs to be verified; and actual performance during the term of the contract needs to be measured (verified). Option B involves procedures for verifying the same items as Option A plus verifying actual achieved energy savings during the term of the contract. Performance verification techniques involve engineering calculations with metering and monitoring.

**"Option C"** is also for projects in which the potential to perform needs to be verified and actual performance during the term of the contract needs to be verified. Option C involves procedures for verifying the same items as Option A plus verifying actual achieved energy savings during the term of the contract. Performance verification techniques involve utility whole building meter analysis and/or computer simulation calibrated with utility billing data.

**"Option D"** is a verification technique where calibrated simulations of the baseline energy use and/or calibrated simulations of the post-installation energy consumption are used to measure Savings for the Energy Conservation Measures. Option D can involve measurements of energy use both before and after the Retrofit for specific equipment or energy end use as needed to calibrate the simulation program. Periodic inspections of the equipment may also be warranted. Energy consumption is calculated by developing calibrated hourly simulation models of whole-building energy use, or equipment sub-systems in the baseline mode and in the post-installation mode and comparing the simulated annual differences for either an average year or for conditions that correspond to the specific year during either the baseline or post-installation period.

**"Mutually Agreed Upon Savings"** – This option is elected when there are no practical means to obtain measurements with reasonable accuracy to verify energy savings or the cost to perform measurements is disproportionate to the energy savings. This option is based energy savings calculations, and variables that are mutually agreed upon between the CUSTOMER and CTS. Equipment and systems included as ECM(s) in Attachment A will be verified to be installed and operating as designed. The Mutually Agreed Upon Savings as described in Attachment E (Schedule of Savings) will be deemed realized upon execution of this Agreement.

**"Retrofit"** is the work provided by CTS as defined by the "ECMs".

**"Savings"** is defined as avoided, defrayed, or reallocated costs.

**"Term"** shall have the meaning as defined in Section 2 hereof.

"**Total Guarantee Year Savings**" is defined as the summation of avoided Energy and Operational Costs realized by facilities in each Guarantee Year as a result of the Retrofit provided by CTS as well as Excess Savings, if any, carried forward from previous years.

## **2. TERM AND TERMINATION**

**2.1 Guarantee Term.** The Term of this Guarantee Period shall commence on the first (1<sup>st</sup>) day of the month following the date of Final Project Acceptance of the Work installed pursuant to this agreement and shall terminate at the end of the Guarantee Period unless terminated earlier as provided for herein. The Term of this Guarantee Period is defined in Section 1 of Attachment E.

**2.2 Guarantee Termination.** Should this Agreement be terminated in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Year in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Years shall be null and void.

## **3. SAVINGS GUARANTEE**

**3.1 Guaranteed Savings.** CTS guarantees to CUSTOMER that the identified Facilities will realize the total energy and operational cost avoidance through the combined value of all ECMs over the Term of the contract as defined in Section 1 of Attachment E. In no event shall the savings guarantee provided herein exceed the total installation, maintenance, and financing costs for the Work under this Agreement. Notwithstanding any other provision of this Agreement required savings reconciliation or verification, the Total Guarantee Year Savings in each Guarantee Year are stipulated and agreed to by both parties to this Agreement to equal the Energy Costs and Operational Cost Avoidance amounts set forth in Attachment E (Schedule of Savings), and shall be deemed realized upon the date of final Project Acceptance.

**3.1.1 Additional Savings.** Additional energy and/or operational cost avoidance that can be demonstrated as a result of CTS's efforts that result in no additional costs to CUSTOMER beyond the costs identified in this Agreement will be included in the guarantee savings reconciliation report for the applicable Guarantee Years(s).

**3.1.2 Savings Prior to Final Retrofit Acceptance.** All energy and operational cost avoidance realized by CUSTOMER that result from activities undertaken by CTS prior to Final Project Acceptance, including any utility rebates or other incentives earned as a direct result of the installed Energy Conservation Measures provided by CTS, will be applied toward the Guaranteed Savings for the First Guarantee Year.

**3.1.3 Cumulation of Savings.** The Guaranteed Savings in each Guarantee Year are considered satisfied if the Total Guarantee Year Savings for such Guarantee Year equals or exceeds the Retrofit and Support Costs for such Guarantee Year or the amount identified in Section 1 of Attachment E hereto.

**3.1.4 Excess Savings.** In the event that the Total Guarantee Year Savings in any Guarantee Year exceed the Guaranteed Savings required for that Guarantee Year, such Excess Savings shall be billed to CUSTOMER (up to any amounts previously paid by CTS for a Guaranteed Savings shortfall pursuant to Section 3.1.5), which amount shall be payable within thirty (30) days after the amount of such Total Guarantee Year Savings has been determined and any remaining Excess Savings shall be carried forward and applied against Guaranteed Savings shortfalls in any future Guarantee Year.

**3.1.5 Savings Shortfalls.** In the event that the Total Guarantee Year Savings in any Guarantee Year is less than the Guaranteed Savings required for that Guarantee Year, after giving credit for any Excess Savings carried forward from previous Guarantee Years pursuant to Section 3.1.4. CTS shall, upon receipt of written demand from CUSTOMER, compensate CUSTOMER the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) days. Resulting compensation shall be CTS's sole liability for any short fall in the Guaranteed Savings.

**3.2 Savings Reconciliation Documentation.** CTS will provide CUSTOMER with a guarantee savings reconciliation report after the first Guarantee Year. CUSTOMER will assist CTS in generating the savings reconciliation report by providing CTS with copies of all bills pertaining to Energy Costs within two (2) weeks following the CUSTOMER's receipt thereof, together with access to relevant records relating to such Energy Costs. CUSTOMER will also assist CTS by permitting access to any maintenance records, drawings, or other data deemed necessary by CTS to generate the said report. Data and calculations utilized by CTS in the preparation of its guarantee cost savings reconciliation report will be made available to CUSTOMER along with such explanations and clarifications as CUSTOMER may reasonably request.

**3.2.1 Acceptance of Guarantee Reconciliation.** At the end of the first Guarantee Year the CUSTOMER will have forty-five (45) days to review the guarantee savings reconciliation report and provide written notice to CTS of non-acceptance of the Guarantee Savings for that Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the guarantee savings reconciliation report will deem it accepted by CUSTOMER. If the annual guarantee savings have been met after the first year, the guarantee will be deemed realized for the entire guarantee term.

**3.2.2 Guarantee Savings Reconciliation.** Guarantee Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in Attachment E and/or additional methodologies defined by CTS that may be negotiated with CUSTOMER at any time.

For reconciliation of Guarantee Savings employing the method of utility bill analysis consistent with F.E.M.P. Option C.

Energy usage for the Facilities for such Guarantee Year will be summarized and compared with the adjusted Baseline Period energy usage for the Facilities through the use of energy accounting software. The difference between the adjusted Baseline Period energy usage and the Guarantee Year energy usage will be multiplied by the applicable energy rate as defined in Attachment E, to calculate the Energy Cost avoidance. Energy Cost avoidance may also include, but are not limited to, Savings from demand charges, power factor correction, taxes, ratchet charges, rate changes and other utility tariff charges that are reduced as a result of the CTS involvement. A Baseline Period will be specified (Section 1 of Attachment E) for the purpose of utility bill analysis.

AND/OR for those energy audits employing the method consistent with I.P.M.V.P. and/or F.E.M.P. Options A and/or B:

For each ECM, CTS will employ an M&V Plan which may be comprised of any or all of the following elements:

1. Pre-retrofit model of energy consumption or demand
2. Post-retrofit measured energy consumption
3. Post-retrofit measured demand and time-of-use
4. Post-retrofit energy and demand charges
5. Sampling plan

The value of the energy savings will be derived from the measured data and engineering formulae included herein, and the applicable energy charges during each Guarantee Year. In some cases, energy usage and/or demand will be calculated from measured variables that directly relate to energy consumption, demand or cost, such as, but not limited to, measured flow, temperature, current, voltage, enthalpy or pressure.

AND/OR for those energy audits employing the method consistent with I.P.M.V.P. and/or F.E.M.P. Option D:

For each Energy Conservation measure, CTS will employ an M&V Plan which may be comprised of any or all of the following elements:

1. Pre-retrofit model of energy consumption or demand
2. Post-retrofit model of energy consumption or demand
3. Post-retrofit measured energy consumption
4. Post-retrofit measured demand and time-of-use
5. Post-retrofit energy and demand charges
6. Sampling Plan

The value of the energy savings will be derived from a calibrated simulation of either the whole building or of sub-systems in the building to determine the difference in the performance of the specific equipment being replaced. This method may entail as needed one-time measurements of the performance of the energy consuming systems in the building in order to calibrate the simulation model. Energy usage for the Facilities for such Guarantee Year will be derived through the use of simulation programs.

**3.3 Operational Cost Avoidance.** The agreed-upon Operational Cost Avoidance as described in Attachment E (Schedule of Savings) will be deemed realized upon execution of this Agreement and will begin to accrue on the date of the completion and acceptance of each Retrofit improvement. These Savings are representative of information provided by the CUSTOMER

consisting of either whole or partial budgeted operational costs and as such, it is hereby understood and agreed that the CUSTOMER is wholly responsible for assuring that these budgeted Operational Costs are accurate and achievable.

**3.4 Base Year Adjustments.** Baseline Period shall be adjusted to reflect: changes in occupied square footage; changes in energy-consuming equipment; changes in the Facilities; changes in Energy and Operational Cost Avoidance Guarantee Practices adversely affecting energy consumption and/or demonstrated operational changes; changes in weather between the Baseline Period and the Guarantee Year; and documented or otherwise conclusively established metering errors for the Baseline Period and/or any Guarantee Year adversely affecting energy usage measurement.

**3.4.1 Facility Operational Changes.** Except in the case of emergencies CUSTOMER agrees it will not, without the consent of an Authorized Representative of CTS: make any significant deviations from the applicable Energy and Operational Cost Avoidance Guarantee Practices; put any system or item of equipment in a permanent "on" position, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices; or assume manual control of any energy management system or item of equipment, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices.

**3.4.2 Hours and Practices.** To achieve these energy savings, CTS and CUSTOMER agree upon the operating practices listed in Attachment E.

**3.4.3 Activities and Events Adversely Impacting Savings.** CUSTOMER shall promptly notify CTS of any activities known to CUSTOMER which adversely impact: CTS's ability to realize the Guaranteed Savings and CTS shall be entitled to reduce its Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond CTS's reasonable control.

**3.5 Guarantee Adjustment.** CTS's Guaranteed Savings obligations under this Agreement are contingent upon: (1) CUSTOMER following the Energy and Operational Cost Avoidance Guarantee Practices set forth herein and in Attachment E; (2) no alterations or additions being made by CUSTOMER to any of the Covered systems and Equipment without prior notice to and agreement by CTS; (3) CUSTOMER sending all current utility bills to CTS within two (2) weeks after receipt by CUSTOMER, if CUSTOMER fails to provide current utility bills for a period of time in excess of six (6) months CTS may, at its sole discretion, deem the Guarantee Savings obligation met during that period and any successive periods, and (4) CTS's ability to render services not being impaired by circumstances beyond its control. To the extent CUSTOMER defaults in or fails to perform fully any of its obligations under this Agreement, CTS may, in its sole discretion, adjust its Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless CTS has first provided CUSTOMER with written notice of CUSTOMER's default(s) or failure(s) to perform and CUSTOMER has failed to cure its default(s) to perform within thirty (30) days after the date of such notice.

The bond provided for the construction of the project only covers the performance of materials and workmanship for the completion of said construction work, not the energy guarantee.

**ATTACHMENT E**

**SCHEDULE OF SAVINGS**

**1. Schedule of Savings**

The total energy and operational cost avoidance over the Term of the contract is equal to or greater than \$626,433 as defined in the following:

| Annual Reconciliation and Savings Allocation |  |                  |                                       |                                   |                |                      |
|--|--|------------------|---------------------------------------|-----------------------------------|----------------|----------------------|
| Year   | Avoided Utility Savings from Existing Baseline ( <i>FEMP A</i> ) |                  | Secured Grants and Utility Incentives | Long Term Operating Costs Savings |                | Guaranteed Savings   |
|  | \$   |                  |                                       | \$                                |                |                      |
| 1  | \$   | 4,574.00         | TBD                                   | \$                                | 542,292.60     | \$546,866.60         |
| 2  | \$   | 4,711.22         | \$ -                                  | \$                                | 3,120.90       | \$7,832.12           |
| 3  | \$   | 4,852.56         | \$ -                                  | \$                                | 3,214.53       | \$8,067.08           |
| 4  | \$   | 4,998.13         | \$ -                                  | \$                                | 3,310.96       | \$8,309.10           |
| 5  | \$   | 5,148.08         | \$ -                                  | \$                                | 3,410.29       | \$8,558.37           |
| 6  | \$   | 5,302.52         | \$ -                                  | \$                                | 3,512.60       | \$8,815.12           |
| 7  | \$   | 5,461.60         | \$ -                                  | \$                                | 3,617.98       | \$9,079.57           |
| 8  | \$   | 5,625.44         | \$ -                                  | \$                                | 3,726.52       | \$9,351.96           |
| 9  | \$   | 5,794.21         | \$ -                                  | \$                                | 3,838.31       | \$9,632.52           |
| 10   | \$   | 5,968.03         | \$ -                                  | \$                                | 3,953.46       | \$9,921.50           |
| <b>Total</b>                                 | <b>\$</b>  | <b>52,435.78</b> | <b>\$ -</b>                           | <b>\$</b>                         | <b>573,998</b> | <b>\$ 626,433.94</b> |

or the sum of the Retrofit and Support Costs for such Guarantee Year, whichever is less. Provided further, in no event shall the savings guarantee provided herein exceed the total installation, maintenance, and financing costs for the Work under this Agreement.

The Term of this contract is for 10 years from the date of Final Project Acceptance

The Baseline Period is defined as Jun 2019 to Jul 2020.

CTS and the customer agree that the energy savings for each will be based on a 3% escalation factor for the costs of utilities. The utility rates for the audit reports will be based on an annual escalation of not less than 3% or the actual utility rate in the current year which ever is higher.

**1.1 Energy Savings.** The annual guarantee of energy cost avoidance is the sum of the below listed ECMs. The savings are based on the listed Energy and operational Cost Avoidance Guarantee Practices contained in Section 1.3 herein.

**# ECM Description**

**ECM-1: Boiler Upgrades** - As part of our Wood Dale Police Station Phase I project, CTS will be removing the four (4) existing boilers that are beyond their typical service life and installing two (2) new boilers with 85% efficiency that are properly sized to handle the current building load. The calculated savings for this ECM is below in section 1.4.3.

**ECM-2: Temperature Controls Upgrades** – As part of our Wood Dale Police Station Phase I project, CTS will be converting the existing pneumatic controls system to a DDC web-based non-proprietary Controls System which will include optimum start, Demand Control Ventilation (DCV), static pressure reset, and hot water reset providing additional energy savings. The calculated savings for this ECM is below in section 1.4.3.



**1.2 Operational Cost Savings.** The annual guarantee of operational cost avoidance strategies are listed below. The Savings are based on the listed Energy and Operational Cost Avoidance Guarantee practices contained in Section 1.3 herein. The operational cost savings identified below are deemed satisfied upon contract execution.

# **Operational Savings Description**

Maintenance Savings: By upgrading the mechanical systems, and temperature controls the city will be reducing their maintenance expenses.

The proposed system upgrades within the scope of work of this agreement will cost less to maintain for the Police Station. The annual operating costs are identified below, are mutually agreed by the CUSTOMER and CTS and are achieved upon project completion.

Annual maintenance savings        \$3,030

**1.3 Energy and Operational Cost Avoidance Guarantee Practices:**

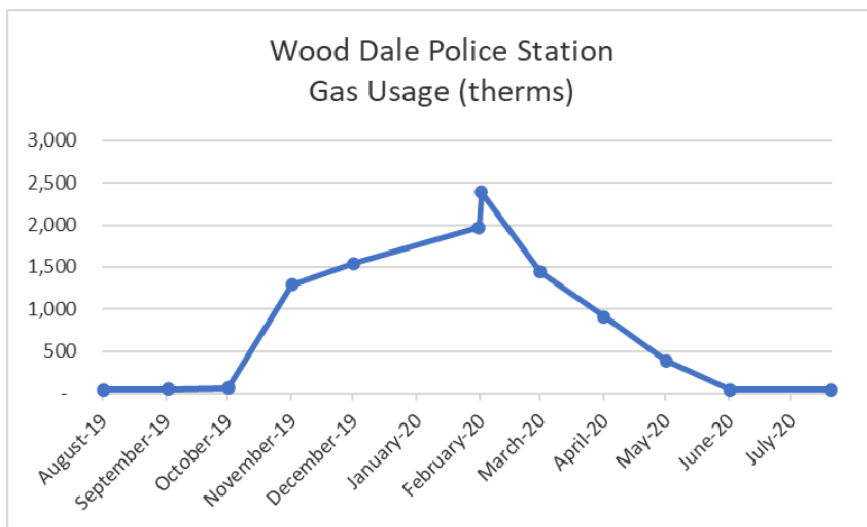
**1.3.1 BASELINE Operating Parameters:** are the facility(s) and system(s) operations measured and/or observed before commencement of the Work. The date summarized will be used in the calculation of the baseline energy consumption and/or demand and for calculating baseline adjustments for changes in facility operation that occur during the Guarantee Period. CTS and CUSTOMER agree that the operating parameters specified in this section are representative of equipment operating characteristics during the Base Year specified in this Agreement. The following data was collected with the assistance of Chief Greg Vesta.

Baseline Operating Parameters:

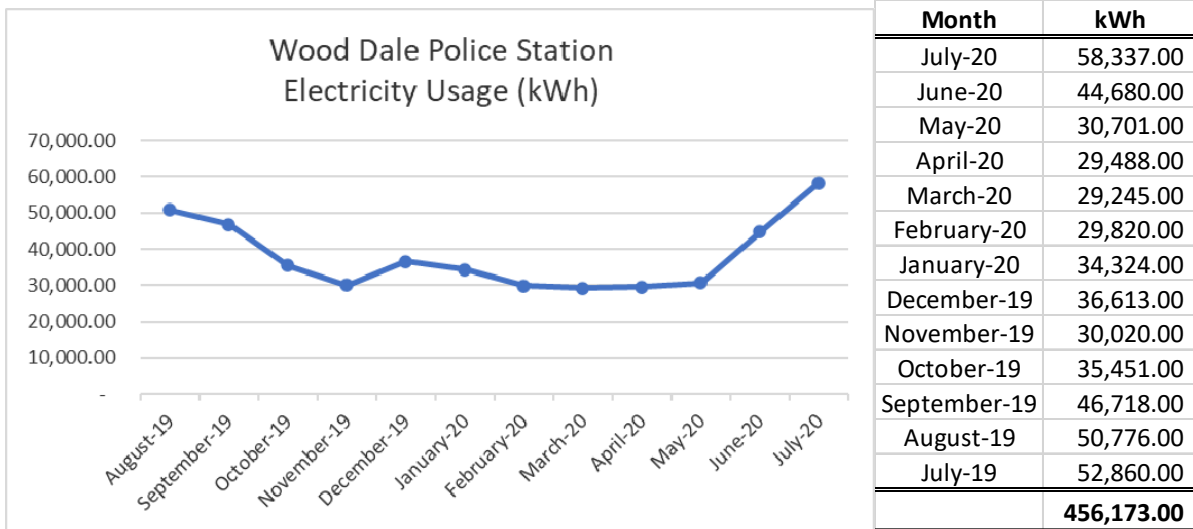
Total area = 14,027 ft<sup>2</sup>

Electrical Usage (adjusted for the police station) = 456,173 kWh/yr

Gas Usage = 10,174 therms/yr



| Month        | therms        |
|--------------|---------------|
| July-19      | 41            |
| August-19    | 44            |
| September-19 | 53            |
| October-19   | 62            |
| November-19  | 1,287         |
| December-19  | 1,542         |
| January-20   | 1,967         |
| February-20  | 2,393         |
| March-20     | 1,441         |
| April-20     | 910           |
| May-20       | 389           |
| June-20      | 45            |
| July-20      | 42            |
| <b>Total</b> | <b>10,174</b> |



**1.3.2 PROPOSED Operating Parameters** of the facility(s) and system(s) after completion of Work. The data summarized will be used in the calculation of the post-retrofit energy consumption and/or demand. CTS and CUSTOMER agree that the proposed operating parameters specified in this section are representative of equipment operating characteristics during the Guarantee Period specified in this Agreement.

Proposed Operating Parameters on which each ECM will rely for achieving energy savings: N/A

**1.3.3 Operational Cost Avoidance.** The following methodologies and/or calculations were used in determining the Operational Costs and/or avoided costs due to the Retrofit implementation. This section is to document standard formulas and/or a brief explanation of how the Operational Cost Savings is supposed to be generated.

Replacement of the mechanical HVAC systems and control systems that are beyond it’s useful life will provide the Wood Dale Police Station with cost avoidance of the future replacement of these systems during the term of the agreement. These cost avoidances are equal to the costs of the system or systems replacement and shall be considered fulfilled upon contract execution. The total operational costs avoidance has been included in the schedule of savings.

Installation Cost Summer 2021: \$484,774

Future Planned Expenditures \$539,263

Includes A & E & Construction Management of 8%

## 1.4 Guarantee Savings Measurement and Verification Plan

### 1.4.1 Measurement and Verification Methodology(s)

| Energy Conservation Measure                 | Electric Savings Verification Method            | Fuel Savings Verification Method                | Other Utility Savings Verification Method |
|---|---|---|---|
| <b>ECM-1: Boiler System Upgrades</b>        | <b>Mutually Agreed Upon Savings Calculation</b> | <b>Mutually Agreed Upon Savings Calculation</b> | N/A                                       |
| <b>ECM-2: Temperature Controls Upgrades</b> | <b>Mutually Agreed Upon Savings Calculation</b> | <b>Mutually Agreed Upon Savings Calculation</b> | N/A                                       |

**1.4.2 Energy Cost Avoidance:** The following describes the Measurement and Verification procedures, formulas, and stipulated values which may be used in the calculation of the energy cost avoidance. The calculation of energy cost avoidance is based upon the utility rate paid during the Guarantee Year, or the Baseline Period utility rate, whichever is higher and/or as defined heretofore. Energy cost avoidance may also include, but is not limited to, Savings from demand charges, power factor correction, taxes, ratchet charges, rate changes and other utility tariff charges that are reduced as a result of the CTS involvement.

M&V Plan:

**1.4.3 Constants:** The following constants and/or stipulated values are agreed to be reasonable and may be used in the calculation of the energy cost avoidance. Note: CTS understands that the City currently does not pay for utilities directly. The following savings were calculated with assumed rates of \$.50(\$/therm), and \$0.07\$/ kwh).

#### **ECM-1 Boiler System (HVAC) Upgrades**

*Remove (4) existing boilers & Install (2) new condensing boilers with 85% efficiency; 300,000 BTUH rating  
Install / Upgrade Boiler controls to include HW temperature setback and boiler sequencing*

##### Current Boiler Gas Usage & Costs:

|          |   |
|----------|---|
| 4        | ... Number of Boilers                             |
| 300,000  | ... Boiler size each (Btu/hr) HW                  |
| 0.3      | ... Boiler Input (MMBtu/hr)                       |
| 1.2      | ... Total Boiler Capacity (MMBtu/hr)              |
| 2        | ... Backup Boiler                                 |
| 2        | ... Active Boiler at any time                     |
| 78%      | ... Boiler Combustion Efficiency (%)              |
| 23%      | ... Boiler Load Factor (%)                        |
| 3%       | ... Boiler standby / skin loss (%)                |
| 280      | ... Heat loss (Therms/yr)                         |
| 90%      | ... % Gas usage for Boiler heating                |
| 5,760    | ... Run Hours (hr/yr) Winter only Oct 1 to May 31 |
| 10,191   | ... Total Boiler Gas Usage (Therms/yr)            |
| \$ 0.50  | ... Gas unit Costs (\$/Therm) estimated           |
| \$ 5,095 | ... Total Gas Costs (\$/yr)                       |

##### Hot Water Pumps:

|        |                                |
|--------|--------------------------------|
| 1.5    | ... HW pump hp (P-1,2)         |
| 2      | ... No. of HW pumps            |
| 1      | ... No of backup pump          |
| 1.1    | ... pump kW                    |
| N      | ... VSD (Y/N)                  |
| 5,760  | ... Operating Hours (hr/yr)    |
| 90%    | ... Estimated Load factor (%)  |
| 65%    | ... Pump efficiency (%)        |
| 8,924  | ... Pump Energy Use (KWh/yr)   |
| 0.07   | ... Electricity Costs (\$/kWh) |
| \$ 594 | ... Pump energy costs (\$/yr)  |

##### Proposed Boiler Gas Usage & Costs:

|          |  |
|----------|--|
| 2        | ... Number of new Boilers                                    |
| 300,000  | ...Each Boiler size (Btu/hr) HW                              |
| 0.3      | ... Boiler Input (MMBtu/hr)                                  |
| 0.60     | ... Total Boiler Capacity (MMBtu/hr)                         |
| 0        | ... Backup Boiler  |
| 2        | ... Active Boiler at any time                                |
| 85.0%    | ... Boiler Combustion Efficiency (%)                         |
| 75%      | ... Boiler Load factor (%)                                   |
| 1%       | ... Boiler standby / skin loss (%)                           |
| 94       | ... Heat loss (dTherms/yr) or MMBtu/yr                       |
| 0%       | ... Boiler controls upgrade savings (%) Reset water with OAT |
| 90%      | ... % Gas use for Boiler                                     |
| 5,760    | ... Run Hours (hr/yr)  |
| 9,352    | ... Boiler Gas Usage (Therms/yr)                             |
| \$ 0.50  | ... Gas unit Costs (\$/Therm)                                |
| \$ 4,676 | ... Gas Costs (\$/yr)  |

##### Hot Water Pumps:

|         |                                |
|---------|--------------------------------|
| 1.5     | ... new HW pump hp             |
| 2       | ... No. of HW pumps            |
| 0       | ... No of backup pump          |
| 1.1     | ... pump kW                    |
| N       | ... VSD (Y/N)                  |
| 5,760   | ... Operating Hours (hr/yr)    |
| 0%      | ... VSD Savings (%)            |
| 8,924   | ... Pump Energy Use (KWh/yr)   |
| \$ 0.07 | ... Electricity Costs (\$/kWh) |
| \$ 594  | ... Pump energy costs (\$/yr)  |

##### Savings Calculations:

|          |   |
|----------|---|
| 10,191   | ... Current Boiler Gas Usage (Therms/yr)                  |
| \$ 5,095 | ... Current Boiler Gas Costs (\$/yr)                      |
| 8,924    | ... Current Boiler HW Pump Usage (kWh/yr)                 |
| \$ 594   | ... Current Boiler HW pump Energy Costs (\$/yr)           |
| \$ 5,690 | ... Total Current Energy Costs (\$/yr)                    |
| 9,352    | ... Proposed Boiler Gas Usage (Therms/yr)                 |
| \$ 4,676 | ... Proposed Boiler Gas Costs (\$/yr)                     |
| 8,924    | ... Proposed Boiler HW pump with VSD Usage (kWh/yr)       |
| \$ 594   | ... Proposed Boiler HW pump with VSD Energy Costs (\$/yr) |
| \$ 5,270 | ... Total Proposed Energy Costs (\$/yr)                   |
| 839      | ... Annual Gas Savings (therms/yr)                        |
| \$ 420   | ... Annual Gas Cost Savings (\$/yr)                       |
| \$ 420   | ... Annual Total Cost Savings (\$/yr)                     |
| 7%       | ... % Savings   |

**ECM-2 Controls Upgrades***Optimum start; DCV; Static pressure reset; HW reset*

|           |     |  |
|-----------|-----|--|
| 456,173   | ... | Current Electricity Usage (kWh/yr)                     |
| 12%       | ... | Estimated savings for controls upgrade %               |
| 401,432   | ... | Proposed Electricity Usage (kWh/yr)                    |
| \$ 0.0666 | ... | Unit Electricity Costs (\$/kWh)                        |
| 54,741    | ... | Electricity Savings (kWh/yr)                           |
| \$ 3,646  | ... | Electricity Costs Savings (\$/yr)                      |
| 10,174    | ... | Current Gas Usage (therm/yr)                           |
| 10%       | ... | Estimated savings for controls upgrade %               |
| 9,157     | ... | Proposed Gas Usage (therm/yr)                          |
| \$ 0.50   | ... | Unit gas Cost (\$/therm)                               |
| 1,017     | ... | Gas Savings (therm/yr)                                 |
| \$ 509    | ... | Gas Costs Savings (\$/yr)                              |
| \$ 4,154  | ... | <b>Total Cost Savings for Controls Upgrade (\$/yr)</b> |

**ATTACHMENT F**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE**

Project Name \_\_\_\_\_

Agreement Effective Date: \_\_\_\_\_

Scope-of-Work (SOW) Item/Energy Conservation Measure (ECM): \_\_\_\_\_

To: CTS

Reference is made to the above listed Agreement between the undersigned and CTS and to the Scope of Work as defined in Attachment A herein. In connection therewith, we confirm to you the following:

1. The Scope of Work (SOW) Item/ Energy Conservation Measure (ECM) referenced above and also listed in Attachment A of the Agreement has been demonstrated to the satisfaction of the Owner's Representative as being substantially complete, including all punch list items generated during the Project Acceptance Procedure.
  
2. All of the Work has been delivered to and received by the undersigned and that said Work has been examined and /or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Work has been accepted by the undersigned and complies with all terms of the Agreement. Consequently, you are hereby authorized to invoice for the Final Payment, as defined in Attachment C, The Payment Schedule.

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

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)

**ATTACHMENT G**

**FORM ALLOCATION OF SECTION 179D DEDUCTION**

|  |  |
|--|--|
| <b>ADDRESS OF GOVERNMENT-OWNED BUILDING:</b><br><br>Project Name: _____<br>Project Street: _____<br>Project City, State & Zip Code: _____  |  |
| <b>AUTHORIZED REPRESENTATIVE OF THE OWNER OF THE GOVERNMENT-OWNED BUILDING:</b><br><br>Owner Name: _____<br>Representative Name: _____<br>Representative Title: _____<br>Representative Street Address: _____<br>Representative City, State & Zip: _____<br>Representative Phone Number: _____                         |  |
| <b>AUTHORIZED REPRESENTATIVE OF DESIGNER RECEIVING THE ALLOCATION OF THE SECTION 179D DEDUCTION:</b><br><br>Designer Name: _____<br>Representative Name: _____<br>Representative Title: _____<br>Representative Street Address: _____<br>Representative City, State & Zip: _____<br>Representative Phone Number: _____ |  |
| <b>PROJECT COST:</b> _____   |  |
| <b>DATE PROJECT PLACED IN SERVICE:</b><br>_____  |  |
| <b>AMOUNT OF SECTION 179D DEDUCTION ALLOCATED TO THE DESIGNER:</b><br><br>Building Envelope: _____<br>Lighting System: _____<br>HVAC System: _____<br>TOTAL: _____   |  |

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct and complete.

AUTHORIZED REPRESENTATIVE OF  
OWNER OF GOVERNMENT-OWNED BUILDING:

AUTHORIZED REPRESENTATIVE OF  
DESIGNER:

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

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



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: Addition of Class GS Liquor License  
Staff Contact: Greg Vesta, Chief of Police  
Department: Police

**TITLE:** A Request for additional Class A Liquor License

### **RECOMMENDATION:**

Determine if City Council wants to add an additional Class A or Class A-R liquor license.

### **BACKGROUND:**

City Council determines the number of liquor licenses available in each classification, and the liquor commissioner then has the authority to issue those licenses.

City Council does not leave additional liquor licenses available until there is a location that has expressed an interest in obtaining a license.

The future tenants of a new restaurant proposed for 334 Georgetown Square, have requested that City Council consider the addition of a Class A liquor license. The restaurant is proposed to be call Pau Hana, a Hawaiian themed restaurant and lounge.

### **ANALYSIS:**

There are two classes of licenses that could be considered for this type of use:

CLASS A: Authorizing the retail sale of alcoholic liquor for consumption only on the premises specified and retail sale of package liquor for consumption off the premises where sold.

CLASS A-R (Restricted): Authorizing the retail sale of alcoholic liquor for consumption only on the premises specified.

If City Council determines that they wish to add an additional Class A or A-R license, staff will prepare the appropriate ordinance for passage.

**DOCUMENTS ATTACHED**

- ✓ Letter Requesting Liquor License



To Mayor Nunzio Pulice and Chief of police Greg Vesta:

My name is Randy Ruhl,

My wife Rae Anne, brother Ronald Ruhl, and I would like to open a tiki style restaurant and lounge at 334 George Town Square in Wood Dale

I am a graduate from Le Cordon Bleu with over 15 years' experience running restaurants and bars. Rae Anne comes from an IT background and is a genius at interior design and also has experience in the food and beverage industry, Ronald is a Wood Dale resident and is very active in Wood Dale civics and brings numerous ideas to the table and a passion to make this the relaxation destination of choice for romantic dinners or just to tune out the real world for a short period of time.

The name of our establishment will be Pau Hana, which in Hawaiian means time after work, and that is what we intend for our place. We are planning on opening geared to people to stop by after work or on a date to enjoy a nice cocktail along with a full kitchen menu.

Pau Hana will have no tv's and we have no intentions of applying for gaming machines at the moment, we want our customers to leave all that behind. What Pau Hana will be is a classic Hawaiian themed restaurant lounge.

We do plan on having monthly live entertainment such as Elvis or the rat pack cover bands, weekly karaoke, daily food specials along with permanent menu items to choose from. Everything made in our full kitchen will be freshly made to order. Our menu is still a work in progress, but it will be based on classic American dishes such as meatloaf, pot-roast, burgers and steaks. The menu will also feature Hawaiian and Asian fusion such as daily fresh made Miso soup, pulled pork, hand rolls, Musubi and poke bowls to name a few.

Rae Anne, Ronald and myself look foreword to working with Wood Dale on this endeavor along with the various other civic activities in the future.

Sincerely,

Randy W. Ruhl



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## PUBLIC WORKS COMMITTEE MINUTES

Committee Date: July 8, 2021  
Present: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Absent: None  
Also Present: Mayor Pulice, Treasurer Porch, Clerk Curiale, Police Chief Vesta, B. Wilson, E. Cage, A. Lange  
Meeting Convened at: 8:55 p.m.

### **APPROVAL OF MINUTES:**

Ald. Jakab made a motion, seconded by Ald. Catalano, to approve the Minutes of the June 10, 2021 meeting as presented. A roll call vote was taken with all members voting aye; motion carried.

### **REPORT & RECOMMENDATION:**

APPROVAL OF AGREEMENT BETWEEN CITY OF WOOD DALE AND HR GREEN, INC FOR WATER SYSTEM MASTER PLAN

### **DISCUSSION:**

Director Lange explained this investment is needed in the City's water distribution system with its aging infrastructure. The first step is to gather all pertinent information and conduct a thorough analysis and use that info to prioritize projects in the CIP. Staff obtained four proposals and are recommending to award the agreement to HR Green to conduct the water system study.

### **VOTE:**

Ald. Jakab made a motion, seconded by Ald. Catalano, to approve an Agreement between the City of Wood Dale and HR Green, Inc. for the Water System Master Plan in an amount not to exceed \$33,300. A roll call vote was taken with the following results:

Ayes: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Nays: None  
Abstained: None  
Motion: Carried



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**REPORT & RECOMMENDATION:**

PROGRAM UPDATE TO REAR YARD DRAINAGE ASSISTANCE PROGRAM TO ALLOW FOR SUMP PUMP CONNECTION AS AN ELIGIBLE PROJECT

**DISCUSSION:**

Director Lange reported this is in response to numerous complaints from residents. He made a correction to his memo, changing the \$1,000 amount to \$3,000. This information would be advertised to residents through the City newsletter and social media, and to targeted areas that have known issues with sump pump problems.

Ald. Woods asked about staff time and what the accepted standard is for a connection. Director Lange explained the resident is responsible to make the connection to the point of connection with the City's main, and that these are all required to undergo inspection.

**VOTE:**

Ald. Messina made a motion, seconded by Ald. Catalano, to approve a Program Update to the Rear Yard Drainage Assistance Program to Allow for Sump Pump Connection as an Eligible Project Type. A roll call vote was taken with the following results:

|            |   |
|------------|---|
| Ayes:      | Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods |
| Nays:      | None  |
| Abstained: | None  |
| Motion:    | Carried   |

**REPORT & RECOMMENDATION:**

APPROVAL OF AGREEMENT BETWEEN CITY OF WOOD DALE AND CORRECTIVE ASPHALT MATERIALS FOR PAVEMENT PREVENTATIVE MAINTENANCE

**DISCUSSION:**

None

**VOTE:**

Ald. Messina made a motion, seconded by Ald. Sorrentino, to approve an Agreement between the City of Wood Dale and Corrective Asphalt Materials for Pavement Preventative Maintenance in an amount not to exceed \$34,320. A call vote was taken with the following results:



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Ayes: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Nays: None  
Abstained: None  
Motion: Carried

**ITEMS TO BE CONSIDERED AT FUTURE MEETINGS:**

- Street Light Policy Revision – Summer
- Patching Program – Summer
- Senior Snow Plowing

**ADJOURNMENT:**

Ald. Woods made a motion to adjourn at 9:20 p.m., seconded by Ald. Sorrentino. A roll call vote was taken with all members voting aye. Motion carried.

*Minutes taken by Eileen Schultz*



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: FY 2022 Pavement Patching Program  
Staff Contact: Patrick Hastings, Assistant Public Works  
Director  
Department: Public Works

**TITLE:** Approval of an Agreement between the City of Wood Dale and Schroeder Asphalt Services, Inc. for the FY 2022 Pavement Patching Program in an Amount Not to Exceed \$96,675

### **RECOMMENDATION:**

Staff Recommends Approval of an Agreement between the City of Wood Dale and Schroeder Asphalt Services, Inc. for the FY 2022 Pavement Patching Program in an Amount Not to Exceed \$96,675.

### **BACKGROUND:**

The City of Wood Dale is responsible for the maintenance and repair of its roadway network as a matter of public health and safety. In addition to pothole patching, each year the City awards a contract for the resurfacing of sections of roadway as a means to extend the useful life of the roadway. This project includes two pavement patches on State roads from water main breaks along with roadways that were determined to be good candidates for the patching program using information gathered from the latest Street Sufficiency Study. Additionally, the asphalt drives for two of the City's pump stations will be resurfaced as well as the remaining section of bike path from Park Lane to Potter Street. Bids were solicited for approximately 3,900 square yards of 3-inch grind and overlay and 50 square yards of IDOT spec patches.

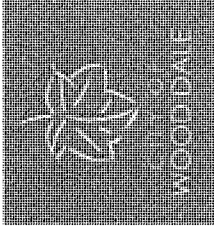
### **ANALYSIS:**

Pavement patching is budgeted for annually within the Capital Improvement Fund as part of the Public Works Department's preventative maintenance program. For fiscal year 2022 the City budgeted \$150,000 for roadway patching. Bids were opened publicly on August 4, 2021 at City Hall and received six bids. Bid results are shown in the attached bid tabulation. All bids were reviewed and Schoreder was determined to be the

lowest qualified bidder. Schroeder has performed this type of work for the City in the past with favorable results. Staff will likely look to add additional patching areas in order to fully utilize the City's budget for preventative maintenance. These additional areas would be brought back to Council in the form of a change order for approval.

**DOCUMENTS ATTACHED**

- ✓ Bid Tabulation
- ✓ Schroeder Asphalt Bid Documents
- ✓ Locations



404 N. Wood Dale Road  
 Wood Dale, IL 60191  
 PHONE: 630-787-3709  
 FAX: 630-766-3898

Location: The City of Wood Dale, 404 N. Wood Dale Road  
Project: 2021 Pavement Patching Program

Date: August 4, 2021  
Time: 10:15 A.M.

| Contractor:                        | Bid Amount:   | Bid Bond: | Addendum: |
|------------------------------------|---------------|-----------|-----------|
| Schroeder Asphalt Svc, Inc         | \$ 96,675.00  | ✓         | ✓         |
| Johnson paving                     | \$ 120,795.00 | ✓         | ✓         |
| Chigagoland Paving Contractors Inc | \$ 100,100.00 | ✓         | ✓         |
| Brothers Asphalt Paving Inc        | \$ 117,250.00 | ✓         | ✓         |
| A Lamp Concrete Contractors Inc    | \$ 137,000.00 | ✓         | ✓         |
| Builders Paving LLC                | \$ 201,350.00 | ✓         | ✓         |

**RETURN WITH BID**

Submitted By: Brent Schroeder

Company Name: Schroeder Asphalt Services, Inc.

Contact Person: Brent Schroeder

Address: P.O. Box 831

City, State, Zip: Huntley, IL 60142

Telephone: 815-923-4380

Fax: 815-923-4389

**CITY OF WOOD DALE  
DUPAGE COUNTY, ILLINOIS**

**NOTICE TO CONTRACTORS  
CONTRACT DOCUMENTS  
SPECIFICATIONS**

**FOR**

**CITY OF WOOD DALE – 2021 PAVEMENT PATCHING PROGRAM  
July 20, 2021**

Annunziato Pulice, Mayor

Lynn Curiale City Clerk

Prepared By:

City of Wood Dale, Public Works  
404 N. Wood Dale Road  
Wood Dale, Illinois 60191



RETURN WITH BID

CITY OF WOOD DALE  
2021 PAVEMENT PATCHING PROGRAM

-PROPOSAL-

Honorable Mayor and City Council  
City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, IL 60191

Ladies and Gentlemen:


The undersigned does hereby state he has examined the Notice to Bidders, Instructions to Bidders, Special Instructions, General Requirements, Proposal, Sample Contract, Technical Specifications, Certifications, and all other documents, and all work shall be done in accordance with the documents contained herein.

The undersigned does hereby propose to furnish all labor, services, materials, supplies, equipment, apparatus, appliances and to do all work and pay all costs and expenses connected therein required to complete this order in accordance with the documents named in the foregoing paragraph, on the basis of the quantities of work and services actually performed and for the unit prices stated herein below.

Name of Company: Schroeder Asphalt Services, Inc.

Address: P.O. Box 831

City, State, Zip: Huntley, IL 60142

Signed:  Date: 8/4/2021

Title: Ronald Schroeder, President

**\*\*Continued on next page\*\***

# RETURN WITH BID

## BID SHEET

The undersigned, having become familiar with the specifications and with local conditions affecting the cost of the work, hereby proposes and agrees, if this bid is accepted, to enter into an agreement with the City in the form included in the contract documents for the contract sum and within the contract time indicated in this bid and in accordance with other terms and conditions of the contract documents, and in so doing, to provide and furnish all the labor, equipment, materials, supplies, hardware, necessary tools, expendable equipment and supplies, and all utility and transportation services necessary to perform and complete, in a first-class manner, the entire work in conjunction with the 2020 Pavement Patching Program.

In accordance with the complete specifications, the following amount constitutes as a total sum of the bid:

### 2020 PAVEMENT PATCHING AND CRACK SEALING PROGRAM

| ITEM          | DESCRIPTION   | ESTIMATED QUANTITY | UNIT | UNIT PRICE | AMOUNT       |
|---------------|---|--------------------|------|------------|--------------|
| 1.            | PAVEMENT PATCHING-<br>REMOVAL AND<br>REPLACEMENT<br>CLASS D TYPE IV (3IN) | 3,900              | SY   | \$ 23.25   | \$ 90,675.00 |
| 2.            | IDOT PATCHING   | 50                 | SY   | \$ 120.00  | \$ 6,000.00  |
| <b>TOTAL:</b> |   |                    |      |            | \$ 96,675.00 |

## RETURN WITH BID

Accompanying this Proposal is a proposal guarantee in the amount of \$ Five Percent Bid Bond (5%) which is hereby tendered in accordance with the requirement of the Instructions to Bidders and the Specifications and/or Special Provisions. If this proposal is accepted and the undersigned fails to execute a contract as required herein, it is hereby agreed that the proposal guarantee shall become the property of the City of Wood Dale, and shall be considered as payment of damages due to delay and other consequences suffered by the City of Wood Dale due to the failure to execute said contract.

The undersigned acknowledges receipt of addenda as follows:

Addendum, No. 1, dated 7/29/21

No. \_\_\_\_\_, dated \_\_\_\_\_

No. \_\_\_\_\_, dated \_\_\_\_\_

This bid is an offer which shall be considered accepted only after the Corporate Authorities authorize the execution of the contract. In the event that this proposal is accepted and an award of contract is made to the undersigned bidder, the undersigned does hereby covenant and agree to deliver to the Owner the signed and executed Contract as specified in the Instructions to Bidders and Specifications within ten (10) days after the date of such acceptance and notification thereof.

The proposal shall be binding for sixty (60) days following the bid opening date unless the bidder, upon request of the City of Wood Dale, agrees to an extension.

THIS BID, WHEN ACCEPTED AND SIGNED BY AN AUTHORIZED SIGNATORY OF THE CITY, SHALL BECOME A CONTRACT BINDING UPON BOTH THE PERSON, PARTNERSHIP, OR CORPORATION TO SUPPLY OR PERFORM AS SPECIFIED AND UPON THE CITY TO ACCEPT THE PRODUCT OR SERVICE.

## RETURN WITH BID

The undersigned further agrees to begin work within ten (10) working days after the execution and acceptance of the Contract, and thereafter to carry on the work diligently and continuously in such

manner as to insure final completion and delivery to the Owner of the entire work under contract in accordance with the provisions of the Contract and Detailed Specifications.

Witness our Hand(s) and Seal this 4th day of August, 2021.  
my/our

If an individual, sign \_\_\_\_\_  
and give address. Address \_\_\_\_\_

If partnership, sign all individual names and give address of each partner. \_\_\_\_\_  
Partnership Name

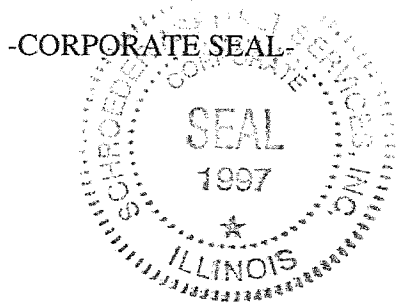
Name and address of individual partners. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If corporation, officers duly authorized should sign, attach corporate seal. Schroeder Asphalt Services, Inc.  
Corporate Name

ATTEST: Ronald Schroeder /Ronald Schroeder  
President

Address: P.O. Box 831, Huntley, IL 60142

By: Grace A. Foss Grace Foss  
Secretary



**CITY OF WOOD DALE  
2020 PAVEMENT PATCHING AND CRACK SEALING PROGRAM**

# RETURN WITH BID

## CITY OF WOOD DALE 2021 PAVEMENT PATCHING PROGRAM

### -DISCLOSURE OF BENEFICIARIES-

In compliance with City of Wood Dale Purchasing Procedures requiring the disclosure of certain interests by persons applying for permits, licenses, approval, or benefits from the City of Wood Dale:

1. Applicant: Schroeder Asphalt Services, Inc,  
Name  
P.O. Box 831, Huntley, IL 60142  
Address

2. Nature of Transaction Sought; for example, license permit approval or sale of products, services, or miscellaneous (explain miscellaneous):

License Permit Approval for Services

3. Nature of Applicant: (Please check one)

- a. Natural Person: \_\_\_\_\_
- b. Corporation: X
- c. Land Trust/Trustee: \_\_\_\_\_
- d. Trust/Trustee: \_\_\_\_\_
- e. Partnership: \_\_\_\_\_
- f. Joint Venture: \_\_\_\_\_

4. If applicant is an entity other than described in Section 3, briefly state the nature and characteristics of the applicant: N/A

5. If in your answer to Section 3 you have checked Box b, c, d, or e, identify by name and address each person or entity who is a 7.5 percent shareholder in the case of a corporation, a beneficiary in the case of a trust or land trust, a joint venturer in the case of a joint venture, or who otherwise has a proprietary interest, interest-in profits and losses, or right to control such entity.

| Name                        | Address                                     | Interest    |
|-----------------------------|---|-------------|
| a. <u>Ronald Schroeder,</u> | <u>14010 Harmony Rd., Huntley, IL 60142</u> | <u>100%</u> |
| b. _____                    | _____                                       | _____       |
| c. _____                    | _____                                       | _____       |

6. Name, address, and capacity of person making this disclosure on behalf of the applicant:

Grace Foss, 11022 S. Grant Hwy., Marengo, IL 60152

IMPORTANT NOTE: In the event your answer to Section 5 identifies entities other than a natural person, additional disclosures are required for each such entity.

VERIFICATION

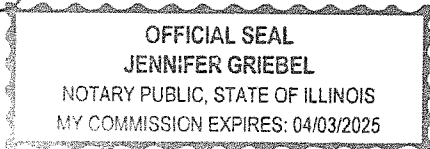
I, Grace Foss, being first duly sworn under oath, depose and state that I am the person making this disclosure on behalf of the applicant, that I am duly authorized to make this disclosure, that I have read the above and foregoing Disclosure of Beneficiaries, and that the statements contained therein are true in both substance and fact.

By: Grace A. Foss / Corporate Secretary  
(Authorized Signature and Title)

Subscribed and sworn to before me this 4th day

of August, 2021.

Jennifer Griebel  
Notary Public




**CITY OF WOOD DALE  
2021 PAVEMENT PATCHING PROGRAM**

**BID CERTIFICATION FORM**

RE: CERTIFICATION OF BIDDER, COMPLIANCE WITH SECTION 33E-11  
OF ILLINOIS CRIMINAL CODE OF 1961

I/we hereby certify that Schroeder Asphalt Services, Inc. is not barred from bidding on this contract as the result of a violation of either Section 33E-3 or 33E-4 of this Article of the Illinois Criminal Code of 1961.

Signed:  Ronald Schroeder  
Date: 8/4/2021  
Title: President

**INTERFERENCE WITH PUBLIC CONTRACTING - - BID RIGGING AND  
ROTATING - - KICKBACKS - - BRIBERY**

**PUBLIC ACT 85-1295  
S.B. 2002**

AN ACT to add Article 33E to the "Criminal Code of 1961", approved July 28, 1961, as amended. Be it enacted by the People of the State of Illinois, represented in the General Assembly:  
Section 1: Article 33E is added to the "Criminal Code of 1961", approved July 28, 1961, as amended, the added Article to read as follows:

**ARTICLE 33E. PUBLIC CONTRACTS**

Sec. 33E-3 Bid-rigging. A person commits the offense of bid-rigging when he knowingly agrees with any person who is, or but for such agreement would be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of State or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) Provides such person or receives, from another, information be disclosed to a competitor in an independent, noncollusive submission of bids or (2) Submits a bid that is off such a price, or other material terms, that he does not intend the bid to be accepted.

Bid-rigging is a Class 3 felony. Any person convicted of this offense shall be barred for 5 years from the date of conviction from bidding on any contract offered for bid by any unit of State or local government.

Sec 33E-4. Bid rotating. A person commits the offense of bid rotating when pursuant to any collusive scheme or agreement with another. He engages in a patten over time (which, for the purposes of this Section, shall include at least 3 contract bids within a period of 10 years, the most recent of which occurs after the effective date of this amendatory Act of 1988) of submitting sealed

bids to units of State or local government with the intent that the award of such bids rotates, or is distributed among persons or business entities which submit bids on a substantial number of the same contracts. Bid rotating is a Class 2 felony. Any person convicted of this offense shall be permanently barred from bidding on public contracts in the State of Illinois.

Bidder hereby certifies:

- A. That this bid is genuine and it not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation.
- B. That he has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid.
- C. That he has not solicited or induced any person, firm, or corporation to refrain from bidding.
- D. That he has not sought by collusion or otherwise to obtain for himself any advantage over any other bidder or over the Owner.
- E. That he is not barred from bidding for this Contract as a result of a violation of Section 33E-3 or Section 33E-4 of the Illinois Criminal Code of 1961 (Ill. Rev Stat. ch. 38, Paragraph 33E-1 et seq.).

SUBMITTED: \_\_\_\_\_

DATE: 8/4/2021

FIRM NAME: Schroeder Asphalt Services, Inc.

ADDRESS: P.O. Box 831, Huntley, IL 60142

SIGNED BY: *Ronald Schroeder* 8/4/2021

(Signature and Date)  
Ronald Schroeder, President

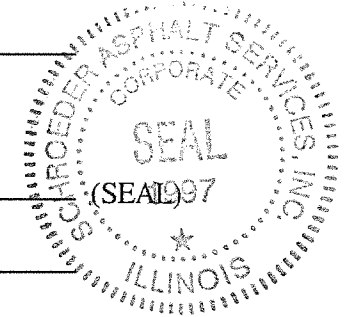
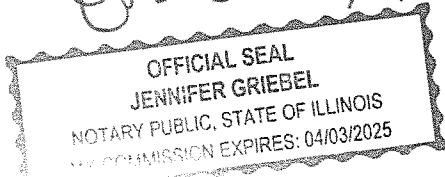
(Title)

ATTEST: *Grace A. Foss* /Grace Foss

(Secretary)

Subscribed and sworn to before me this 4th day of August 2021.

*Jennifer Griebel* (Notary Public)





**CITY OF WOOD DALE  
2021 PAVEMENT PATCHING PROGRAM**

**CERTIFICATION**

Schroeder Asphalt Services, Inc. (hereinafter referred to as "Contractor")  
having submitted a bid/proposal for 2021 Pavement Patching Program to the City of Wood Dale,  
DuPage County, Illinois, for Schroeder Asphalt Services, Inc., hereby certifies  
that:

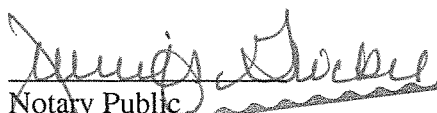
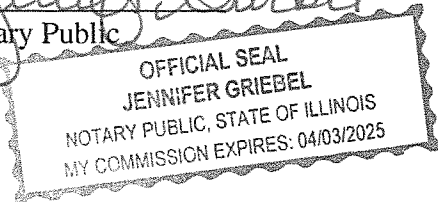
5/2-105(A) (4) including the following information:

1. An acknowledgement of the illegality of sexual harassment.
2. The definition of sexual harassment under State law.
3. A description of sexual harassment, utilizing examples.
4. The contractor's internal complaint process, including penalties.
5. The legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission.
6. Directions on how to contact the Department of the Commission.
7. An acknowledgement of protection of a complainant against retaliation as provided in Section 6-101 of the Human Rights Act.

Each contractor must provide a copy of such written policy to the Illinois Department of Human Rights upon request.

By:  /Ronald Schroeder  
/President  
Authorized Agent of Contractor

Subscribed and sworn to before me on this 4th day of August 2021.

  
Notary Public  


**CITY OF WOOD DALE  
2021 PAVEMENT PATCHING PROGRAM**

**CONTRACTOR'S DRUG-FREE WORKPLACE CERTIFICATION**

Pursuant to Ill. Rev. Stat. ch. 127 paragraph 132.311 et. seq. ("Drug Free Workplace Act), the undersigned contractor hereby certifies to the contracting agency that it will provide a drug-free workplace by:

- (a) Publishing a statement:
  - (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's of contractor's workplace.
  - (2) Specifying the actions that will be taken against employees for violations of such prohibition.
  - (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
    - (A) Abide by the terms of the statement; and
    - (B) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's or contractor's policy of maintaining drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance program; and
  - (4) The penalties that may be imposed upon employees for drug violation.
- (c) Making it a requirement to give a copy of the statement required by subsection (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the contracting agency within ten (10) days after receiving notice under par (B) of paragraph (3) of subsection (a) from an employee or otherwise receiving actual notice of such conviction.

Dated: 8/4/2021

By:  /Ronald Schroeder  
/President  
Authorized Agent of Contractor

# RETURN WITH BID

## CITY OF WOOD DALE 2021 PAVEMENT PATCHING PROGRAM

### CERTIFICATIONS

Ronald Schroeder, being first duly sworn, deposes and states that he is President of Schroeder Asphalt Services, Inc. (Partner, Officer, Owner, etc.) (Corporation / Company)

and that he is cognizant of the following statutory requirements and under penalty of perjury and certifies the following:

Anti-Collusion Affidavit of Compliance: That bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person to put in a sham bid or to refrain from bidding; and has not in any manner directly or indirectly sought by agreement or collusion or communication or conference with any person to fix the bid price element of said bid or that of any other bidder; or to secure any advantage against any other bidder or any person interested in the proposed contract.

Public Act 85-1295: That bidder is not barred from bidding on this contract as a result of a violation of either Section 33E-3 or 33E-4 of P.A. 85-1295 (720ILCS 5).

Public Act 86-1039: That bidder is not barred from contracting with the City of Wood Dale because of any delinquency in the payment of any tax administered by the Department of Revenue unless the individual or entity is contesting, in accordance with the procedures established by the appropriate revenue act, liability for the tax, or the amount of the tax (65ILCS 5/11-42.1-1).

Public Act 86-1459: That bidder will provide a drug free workplace in accordance with the Illinois Drug Free Workplace Act (30ILCS 580/2).

Illinois Human Rights Act: That bidder is presently in compliance and agrees to comply with all applicable provisions of the Illinois Human Rights Act, together with all rules and regulations promulgated and adopted pursuant thereto (775ILCS 5/1 -101 et seq.).

Equal Employment Opportunities-Affirmative Action: That bidder is presently in compliance and agrees to comply with all applicable provisions of Equal Employment Opportunities--Affirmative Action (775ILCS 5/2-105 [A]).

Americans with Disabilities Act of 1990: That bidder is presently in compliance and agrees to comply with all applicable provisions of the Americans with Disabilities Act of 1990 together with all rules and regulations promulgated and adopted pursuant thereto.

**INDIVIDUAL:**

Signature of Bidder: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone Number: \_\_\_\_\_

**PARTNERSHIP:**

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

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

Business Address: \_\_\_\_\_

Business Phone Number: \_\_\_\_\_

Insert Names and Addresses of All Partners: \_\_\_\_\_

\_\_\_\_\_

**CORPORATION:**

Corporate Name: Schroeder Asphalt Services, Inc.

Signed By: *Ronald Schroeder* /Ronald Schroeder

Title: President

Business Address: P.O. Box 831, Huntley, IL 60142

Business Phone Number: 815-923-4380



Insert Names of Corporate Officers

President: Ronald Schroeder

Secretary: Grace Foss

Treasurer: Ronald Schroeder

Attest: *Grace A. Foss* /Corporate Secretary

# RETURN WITH BID

## CITY OF WOOD DALE 2021 PAVEMENT PATCHING PROGRAM

### -REFERENCES-

Name of Bidding Firm: Schroeder Asphalt Services, Inc.  
(Please print)

The Contractor must list three (3) references with needs similar to the City of Wood Dale for whom Contractor has supplied the materials and services for which he is bidding on this contract within the last three years. Please include name, address, telephone number, contact person, and type of work you performed for that entity.

1. Company Name/Municipality: Village of Arlington Heights  
Address: 33 S. Arlington Heights Rd., Arlington Heights, IL 60005  
Phone: 847/368-5806  
Contact Person: Patrick Smith  
Type of Work: Asphalt Pavement Patching
  
2. Company Name/Municipality: Village of Downers Grove  
Address: 5101 Walnut Avenue, Downers Grove, IL 60515  
Phone: 630/434-5467  
Contact Person: Nate Hawk  
Type of Work: Asphalt Paving Patching
  
3. Company Name/Municipality: Village of Lake Zurich  
Address: 60 East Main Street, Lake Zurich, IL 60047  
Phone: 847/540-1696 X8008  
Contact Person: Michael Cernock  
Type of Work: Pavement Patching

# SCHROEDER ASPHALT SERVICES, INC.

P.O. BOX 831  
HUNTLEY, IL 60142

PHONE: (815) 923-4380  
FAX: (815) 923-4389

## JOB REFERENCES

Company: Village of Arlington Heights  
33 S. Arlington Heights Rd.  
Arlington Heights, IL 60005

Project(s): 2013, 2014, 2015, 2016, 2018. 2019 HMA Restoration

Amount(s): 2013 - \$83,000.00 (6/10 - 6/23/13) / 2014 - \$325,000.00 (6/10 - 11/16/14) /  
2015 - \$265,008.12 (4/13 - 11/15/15) / 2016 - \$549,966.13 /  
2017 - \$508,261.80 / 2018 - \$90,043.93 / 2018 - \$547,000 / 2019 - \$480,000

Engineer: Village of Arlington Heights  
Jeff Musinski - 847/368-5806  
[jmusinski@vah.com](mailto:jmusinski@vah.com)

Company: Village of Streamwood  
301 E. Irving Park Road  
Streamwood, IL 60107

Project(s): 2008 & 2009 MFT Resurfacing  
2013, 2014 - 2015 - 2016 - 2019 - 2020 Roadway Maintenance Program

Amount(s): 2008 - \$456,759.00 (5/1 - 10/31/08) / 2009 - \$399,298.00 (6/4 - 9/30/09) /  
2013 - \$630,503.68 (4/30 - 10/20/13) / 2014 - \$766,572.20 (5/26 - 8/31/14) /  
2015 - \$761,095.47 (6/1 - 10/18/15) / 2016 - \$862,625.45 (5/29/16 - 10/16/16) /  
2018 - \$748,007.85 (5/21 - 9/30/18) 2019 - \$727,867.01.(6/3 - 10/20/19) /  
2020 - \$1,750,466.85 (5/18 - 10/18/2020)

Engineer: Village of Streamwood  
Matt Mann / Director of Engineering & Public Works - 630-736-3850  
[Mmann@streamwood.org](mailto:Mmann@streamwood.org)

Company: Village of Vernon Hills  
290 Evergreen Dr.  
Vernon Hills, IL 60061

Project(s): 2012, 2013, 2014, 2015, 2016, 2017 & 2018 Bituminous Patching Program. 1 Year Renew  
2015 & 2017 Road Rehabilitation

Amount(s): 2012 - \$43,639.04 (6/25 - 7/6/12) / 2013 - \$43,072.86 (7/1 - 7/7/13) /  
2014 - \$58,957.50 (8/11 - 11/16/14) / 2015 - \$73,836.77 (7/6 - 7/12/15) /  
2016 - \$74,966.40 (8/1/16 - 8/28/16) / 2017 \$64,274.94 (5/29/17 - 6/9/17) /  
2018 - \$74,203.84 (7/9 - 9/30/18)  
2015 Road Rehabilitation \$1,178,493.22 (6/1 - 7/12/15)  
2017 Road Rehabilitation \$920,041.23 (5/17 - 10/15/18)

Engineer: Village of Vernon Hills  
Steven Maslov / Engineering Technician - 847/918-3590  
[stevem@vhill.org](mailto:stevem@vhill.org)

Company: Village of Broadview  
2350 S. 25<sup>th</sup> Avenue  
Broadview, IL 60155

Project: 2017 Spring Paving Improvement

Amount(s): \$776,298.25 (5/5 - 10/19/17)

Engineer: Edwin Hancock Engineering  
Chris Baker 708/865-0300  
[cbaker@ehancock.com](mailto:cbaker@ehancock.com)

Company: Village of Palatine  
200 E. Wood St.  
Palatine, IL 60067  
Project(s): 2012 Palos Avenue Phase 2, ENG 12-401  
2015 Street Rehabilitation, 2015 Kenilworth Ave. Improvements  
Amount(s): 2012 - \$323,290.25 (4/30 – 10/31/12) / 2015 \$552,233.25 (4/20 – 6/14/15) /  
2015 – \$180,467.05 (8/3 – 9/6/15)  
2017 – 2017 Metra Paving Remove & Replace \$17,958.17 (4/23 - 4/28/17)  
2018 – West Wilson Street Improvements \$285,618.13 (4/16 – 6/24/18)  
2020 – 2020 MFT Street Rehabilitation \$726,101.57  
2020 – Wood Street & Greeley Street Resurfacing \$365,793.63  
Engineer: Village of Palatine  
Matt Grenning / Engineer - 847/359-9044  
[Mgrenning@palatine.il.us](mailto:Mgrenning@palatine.il.us)

Company: Village of Downers Grove  
5101 Walnut Ave.  
Downers Grove, IL 60515  
Project(s): 2012, 2013, & 2015 Fall Roadway Patching Project  
Amount(s): 2012 - \$82,839.30 (10/23 – 10/26/12) / 2013 - \$229,348.45 (10/27 – 11/17/13) /  
2015 - \$84,371.70 (9/21 – 11/8/15)  
Engineer: Village of Downers Grove  
Nate Hawk - 630/434-5467  
[nhawk@downers.us](mailto:nhawk@downers.us)

Company: Winfield Township Road District  
30W575 Roosevelt Rd.  
P.O. Box 617  
West Chicago, IL 60186-0617  
Project(s): 2012, 2013, 2014, & 2015 Road Maintenance Program  
Amount(s): 2012 - \$478,599.80 (10/29 – 11/4/12) / 2013 - \$505,610.04 (9/16 – 10/20/13) /  
2014 - \$339,421.39 (10/27 – 11/9/14) / 2015 - \$478,220.38 (9/14 – 10/18/15)  
Engineer: Winfield Township Road District  
John Dusza– 630/231-8850  
[RoadDistrict@WinfieldTownship.com](mailto:RoadDistrict@WinfieldTownship.com)

Company: Village of Bloomingdale  
201 S. Bloomingdale Road  
Bloomingdale, IL 60108  
Project: 2015 Street Improvement Project  
Amount(s): \$1,354,600.38  
Engineer: Village of Bloomingdale  
Brian Sisco– 630/671-5675  
[siscob@vil.bloomingdale.il.us](mailto:siscob@vil.bloomingdale.il.us)

Company: City of St. Charles  
2 East Main Street  
St. Charles, IL 60174  
Project: 2015 MFT Program #15-00106-00-RS  
2016 MFT Program #16-00106-00-RS  
2018 MFT Program #18-00110-00-RS  
Amount(s): 2015 - \$1,112,218.65 / 2016 - \$1,761,733.65 / 2018 - \$1,560,525.82  
Engineer: City of St. Charles  
Ken Jay 630/377-4418  
[kjay@stcharlesil.gov](mailto:kjay@stcharlesil.gov)

Company: Village of Glen Ellyn  
535 Duane Street  
Glen Ellyn, IL 60137  
Project: 2014 Street Resurfacing Project  
2018 Parking Lot Resurfacing & Asphalt  
2020 Utility & Roadway Improvement  
Amount(s): 2014 - \$1,238,787.92 / 2018 - \$266,296.24 / 2020 - \$1,298,380.83  
Engineer: Village of Glen Ellyn  
Jeff Perrigo 630/547-5512  
[jperrigo@glenellyn.org](mailto:jperrigo@glenellyn.org)

Company: City of Darien  
1702 Plainfield Road  
Darien, IL 60561  
Project: 2017 & 2018 Street Program  
Amount(s): 2017 - \$1,951,291.35 (5/1 - 7/30/17) / 2018 - \$1,294,013.60 (6/4 - 8/19/18)  
Engineer: Dan Gombec  
Darien Public Works 630/353-8106  
[dgombac@darienil.gov](mailto:dgombac@darienil.gov)

Company: Village of Burr Ridge  
7660 County Line Road  
Burr Ridge, IL 60527  
Project: 2017 MFT Road Program  
2020 MFT Road Program  
Amount(s): \$530,429.98 (6/1 - 11/10/17) / \$621,946.20  
Engineer: James Miedema, P.E. 630/323-4733 X6010  
Village of Burr Ridge  
[jmiedema@burr-ridge.gov](mailto:jmiedema@burr-ridge.gov)

Company: Village of Carol Stream  
500 N. Gary Avenue  
Carol Stream, IL 60188  
Projects: 2018 Flexible Pavement Project  
2020 Flexible Pavement Project  
Amounts: \$1,921,872.65 (2018) / \$3,174,446.05 (2020)  
Engineer: Village of Carol Stream  
Adam Frederick  
[afrederick@carolstream.org](mailto:afrederick@carolstream.org)



# **SCHROEDER**

## **ASPHALT SERVICES, INC.**

PO. BOX 831  
HUNTLEY, IL 60142

PHONE: (815) 923-4380  
FAX: (815) 923-4389

Schroeder Asphalt Services, Inc.  
Phone: 815/923-4380  
Fax: 815/923-4389

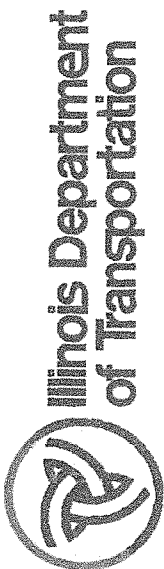
Mailing & Legal Address:  
P.O. Box 831  
Huntley, IL 60142-0831

Office Location:  
11022 S. Grant Hwy.  
Marengo, IL 60152-9405

Corporation - Incorporated in the state of Illinois on 5/8/1997  
In business for 24 years.

President: Ronald Schroeder  
Vice President: Jennifer Graves  
Treasurer: Ronald Schroeder  
Corporate Secretary: Grace Foss

FEIN # 39-1889745



# Certificate of Eligibility

Contractor No 5378

Schroeder Asphalt Services, Inc.  
P. O. Box 831 HUNTLEY, IL 60142

WHO HAS FILED WITH THE DEPARTMENT AN APPLICATION FOR PREQUALIFICATION STATEMENT OF EXPERIENCE, EQUIPMENT AND FINANCIAL CONDITION IS HEREBY QUALIFIED TO BID AT ANY OF DEPARTMENT OF TRANSPORTATION LETTINGS IN THE CLASSES OF WORK AND WITHIN THE AMOUNT AND OTHER LIMITATIONS OF EACH CLASSIFICATION, AS LISTED BELOW, FOR SUCH PERIOD AS THE UNCOMPLETED WORK FROM ALL SOURCES DOES NOT EXCEED  
\$54,585,000.00

|     |                             |                |
|-----|-----------------------------|----------------|
| 001 | EARTHWORK                   | \$1,725,000    |
| 005 | HMA PAVING                  | \$25,000,000 B |
| 012 | DRAINAGE                    | \$750,000      |
| 017 | CONCRETE CONSTRUCTION       | \$550,000      |
| 032 | COLD MILL, PLAN. & ROTOMILL | \$5,500,000    |
| 08A | AGGREGATE BASES & SURF. (A) | \$2,500,000    |

THIS CERTIFICATE OF ELIGIBILITY IS VALID FROM 4/9/2021 TO 4/30/2022 INCLUSIVE, AND SUPERSEDES ANY CERTIFICATE PREVIOUSLY ISSUED, BUT IS SUBJECT TO REVISION OR REVOCATION, IF AND WHEN CHANGES IN THE FINANCIAL CONDITION OF THE CONTRACTING FIRM OR OTHER FACTS JUSTIFY SUCH REVISIONS OR REVOCATION. ISSUED AT SPRINGFIELD, ILLINOIS ON 4/9/2021.

B Restricted to 1200 tons in any 1 contract (Class I and/or BAI) or as specified by local agency

*Jim Bell*  
Engineer of Construction

**CITY OF WOOD DALE  
2021 - PAVEMENT PATCHING PROJECT**

**ADDENDUM NO. 1**

***PLEASE NOTE CONTENTS HEREIN AND AFFIX TO BID DOCUMENTS AS PREVIOUSLY  
DISTRIBUTED***

1. Location 4 – Park Pump Station should be listed as approximately 500 Square Yards. Not the 1,900 SY as stated.
2. There is location 8 that was not depicted on the original bid document. It should show as:  
Location 8 – Salt Creek Pedestrian Bike Path From Park Lane to Potter Avenue, Near 412 Park Lane – Approximately 700 Sq Yd



3. The IDOT patching will be restricted to a 9am-3pm lane closure and can be done in one day.

4. Location 7 will be removed and replaced with:

Location 7 – Century and Heritage – Approximately 450 SqYd



5. Bid Bond shall be ten percent (10%).

6. No striping will be included in this contract. It will be handled separately.


**AIA Document A310™ – 2010**
**Bid Bond****CONTRACTOR:***(Name, legal status and address)*

Schroeder Asphalt Services, Inc.

PO Box 831

Huntley, IL 60142-0831

**OWNER:***(Name, legal status and address)*

City of Wood Dale

404 N Wood Dale Rd

Wood Dale, IL 60191-1534

**BOND AMOUNT: \$**

Ten Percent of the Amount Bid

**PROJECT:***(Name, location or address, and Project number, if any)*

2021 - Pavement Patching Project

**SURETY:***(Name, legal status and principal place of business)*

West Bend Mutual Insurance Company

PO Box 620976

Middleton, WI 53562

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Init.

AIA Document A310™ – 2010. Copyright © 1963, 1970 and 2010 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:24:00 ET on 02/17/2021 under Order No. 7809530746 which expires on 02/20/2022, and is not for resale.

User Notes:

Signed and sealed this 4 day of August , 2021

[Signature]  
(Witness)

[Signature]  
(Witness)

Schroeder Asphalt Services, Inc.

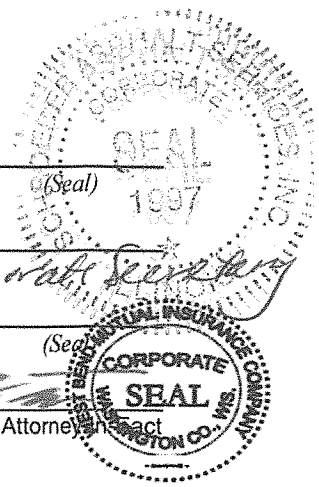
(Contractor as Principal)

Grace A. Foss  
(Title) Grace Foss, Corporate Secretary

West Bend Mutual Insurance Company

(Surety)

[Signature]  
(Title) Chad R Beth , Attorney in Fact



Init.

User Notes:



**POWER OF ATTORNEY**

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Chad R Beth

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of: **Ten Million Dollars (\$10,000,000)**

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21<sup>st</sup> day of December, 1999.

*Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.*

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 22nd day of September, 2017.

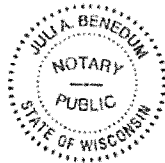
Attest Christopher C. Zwygart  
**Christopher C. Zwygart**  
Secretary



Kevin A. Steiner  
**Kevin A. Steiner**  
Chief Executive Officer/President

State of Wisconsin  
County of Washington

On the 22nd day of September, 2017, before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Juli A. Benedum  
**Juli A. Benedum**  
Senior Corporate Attorney  
Notary Public, Washington Co., WI  
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 4th day of August, 2021.



Heather A. Dunn  
**Heather Dunn**  
Vice President – Chief Financial Officer

**Notice:** Any questions concerning this Power of Attorney may be directed to the Bond Manager at NSI, a division of West Bend Mutual Insurance Company.

# Acknowledgment of Corporate Surety

STATE OF Illinois )

ss

County of McHenry )

On this 4th day of August, 20 21, before me appeared Chad R. Beth to me personally known, who being by me duly sworn, did say that he/she is the aforesaid officer or attorney in fact of the West Bend Mutual Insurance Company, a corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by the aforesaid officer (or Attorney-in-Fact), by authority of its Board of Directors; and the aforesaid officer (or Attorney-in-Fact), acknowledged said instrument to be the free act and deed of said corporation.

My Commission Expires



*Stephanie Heinberg*

Notary Public

June 3rd, 20 25

County of McHenry, State of Illinois

MICHIGAN ONLY: This policy is exempt from the filing requirements of Section 2236 of the Insurance Code of 1956, 1956 PA 218 and MCL 500.2236.



**Digital Seal, Signature Authority and Enforceability**

The use of an electronic image of the corporate seal of West Bend Mutual Insurance Company (the "Digital Seal") and the attachment of the Digital Seal to any surety bond issued by West Bend Mutual Insurance Company is authorized. The Digital Seal may be affixed to any West Bend Mutual Insurance Company bond and relied upon to the same extent as if a raised corporate seal were physically attached to the bond. Also, as permitted by law, the electronic delivery and submission of any surety bond on behalf of West Bend Mutual Insurance Company and the execution of such surety bonds by an attorney-in-fact of the West Bend Mutual Insurance Company using a digital signature shall have the same legal effect as delivery of a tangible original with the original "wet" signature of an attorney-in-fact.

Delivery of a digital copy of this Digital Seal, Signature Authority and Enforceability notice, executed electronically, to an Oblige or Obligee's representative shall constitute effective execution and delivery of this notice and shall have the same legal effect as delivery of a tangible original of the notice with my original "wet" signature.

In witness whereof, this has been executed by a Vice President of West Bend Mutual Insurance Company.

Dated this 9<sup>th</sup> day of April, 2020.



Gary W. Alexander  
Vice President

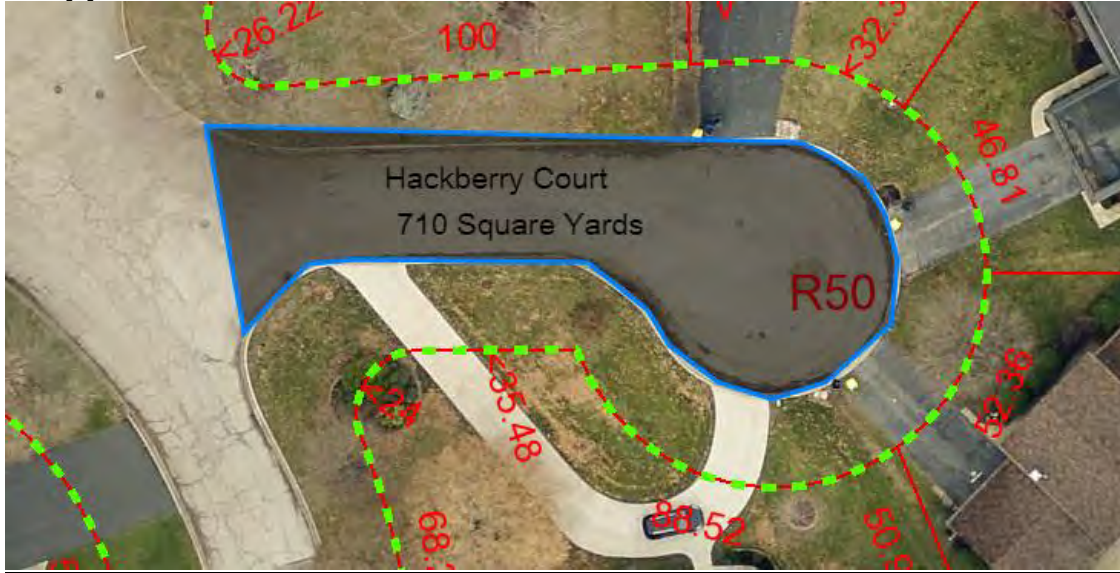


West Bend Mutual Insurance Company

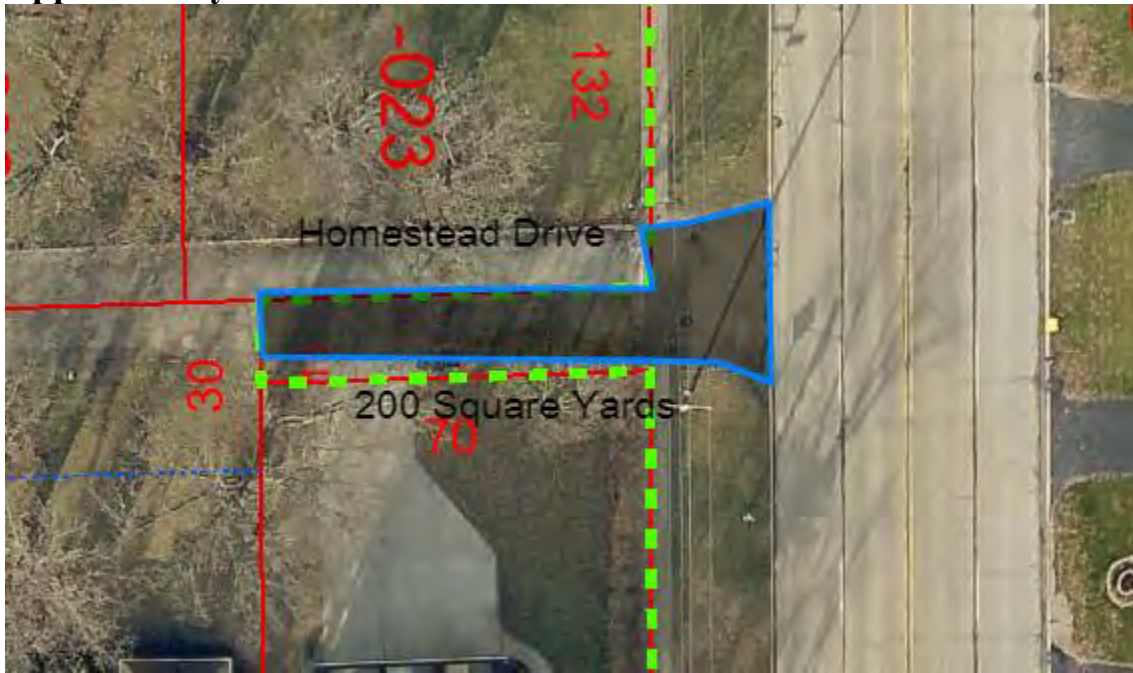
## 2021 PAVEMENT PATCHING PROGRAM LOCATIONS

### Roadways

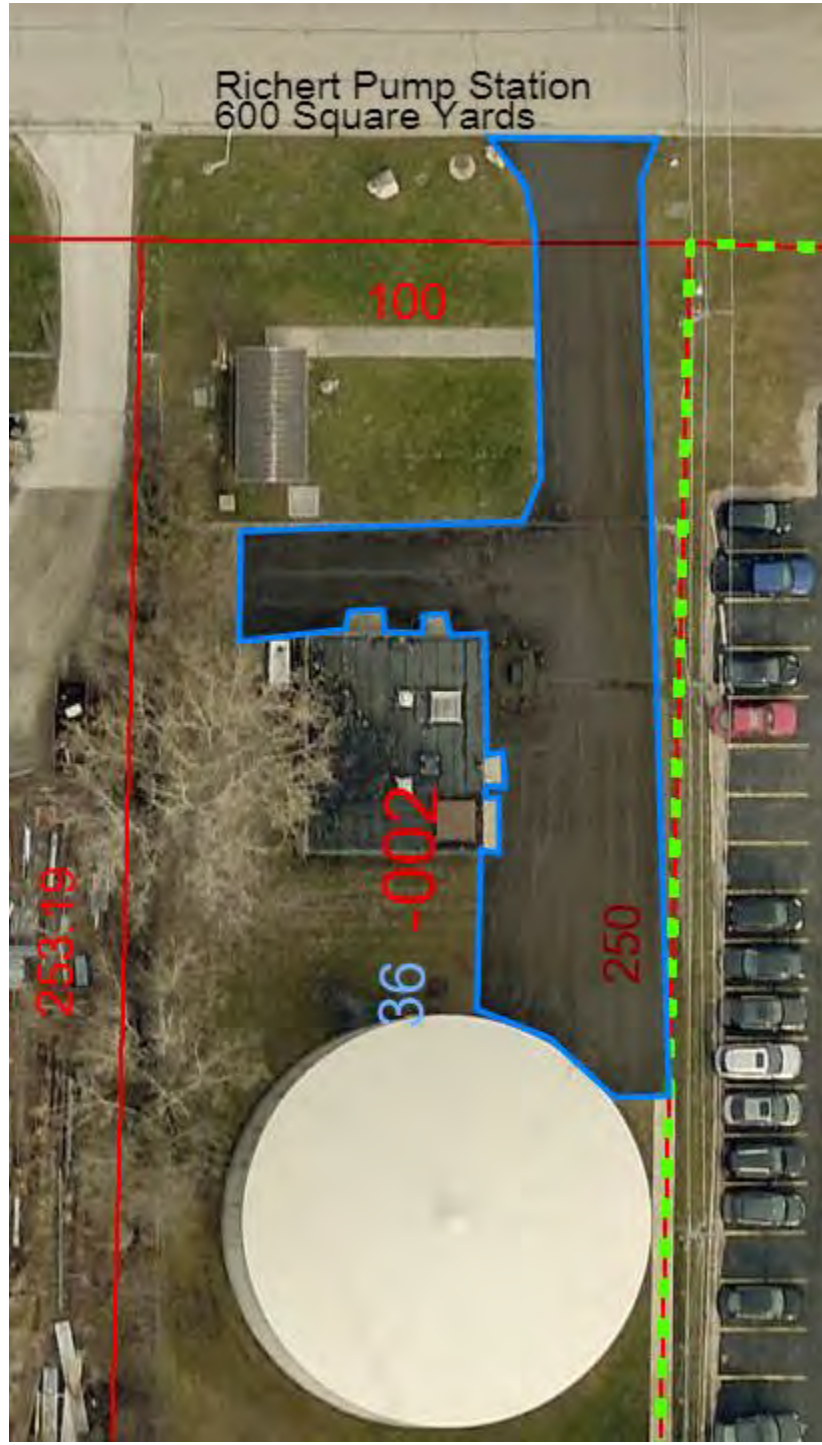
- 1) Hackberry Court - From Butternut Ave. to the Dead End.  
Approx. 710 SY



- 2) Homestead Drive – from Wood Dale Rd. to end of Right of Way.  
Approximately 200 SY

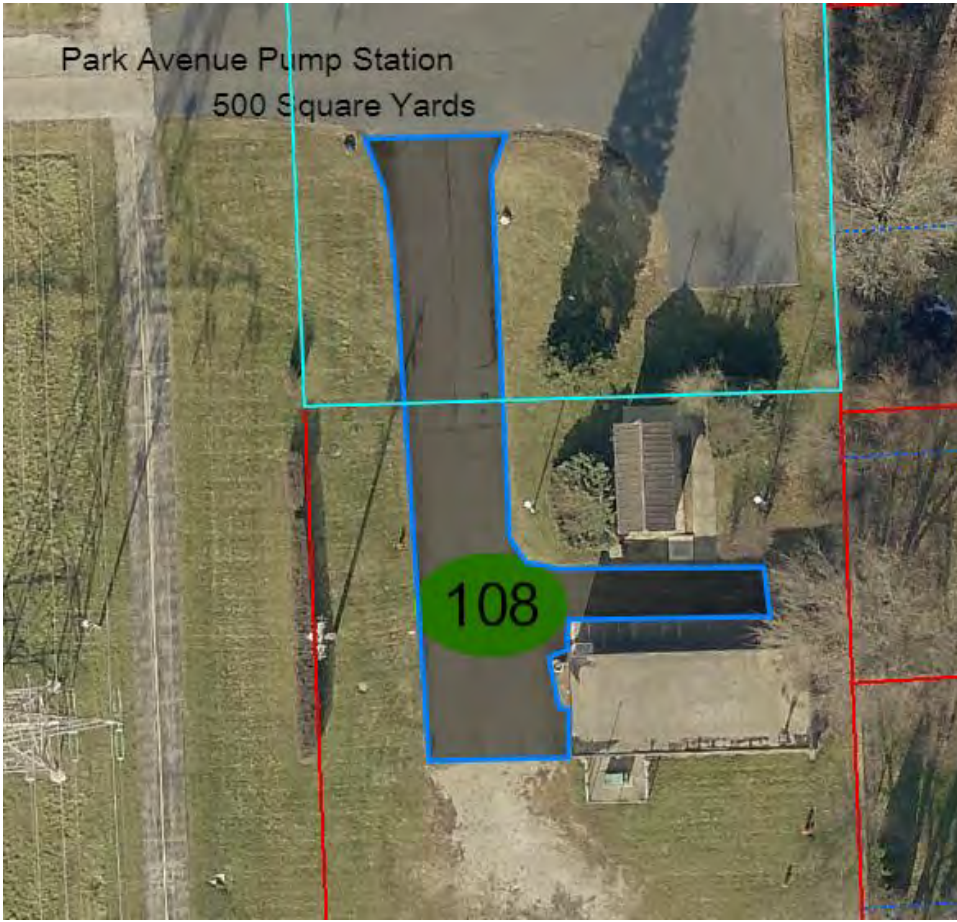


**3) Richert Pump Station – Drive Isle Approximately 600 SY**





**4) 410 Park Avenue – Park Pump Station – Approximatly 1900 SY**



5) Elmwood Ave. – Windsor to Dead End Approximately 400 SY



6) Mark Street from Mittel to Michael Dr. – Two patches Approximately 350 total SY



7) Location 7 – Century and Heritage – Approximately 450 SqYd





**8) Location 8 – Salt Creek Pedestrian Bike Path From Park Lane to Potter Avenue, Near 412 Park Lane – Approximately 700 Sq Yd**





## State Patches

### State Road Patches

1. 269 W. Irving Park Road
  - a. Northern West Bound Lane.
  - b. 11' x 20'. Approximately 25 SY
2. 217 E. Irving Park Road
  - a. Northern most Westbound lane
  - b. 7' x 16'. Approximately 12.4 SY



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: FY 2022-23 Sewer Cleaning and Televising  
Staff Contact: Alan Lange, Public Works Director  
Department: Public Works

**TITLE:** Approval of an Agreement between the City of Wood Dale and Sewertech, LLC for the FY 2022-23 Sewer Cleaning and TV Program in an Amount Not to Exceed \$59,622.70

### **RECOMMENDATION:**

Staff Recommends Approval of an Agreement Between the City of Wood Dale and Sewertech LLC for the FY 2022-23 Sewer Cleaning and TV Program in an Amount Not to Exceed \$59,622.70.

### **BACKGROUND:**

The City of Wood Dale has experienced occasional sanitary sewer overflows from the collection system during significant wet weather events in recent years due to inflow and infiltration of storm water into the sanitary system. As such, the City has committed to repairing structurally deficient sections of sewer main through the Inflow & Infiltration Program. The current study area is in Ward 4 north of Irving Park Road and South of Elmhurst Street. The first step in this program is to clean and televise all of the sanitary mains in the identified study area in order to assess the condition and schedule repairs. Public Works staff has performed a significant portion of this work in house however the remaining sections of main within the study area are in extremely poor condition and require specialized cleaning and televising equipment. Staff will continue to televise other areas which are in more stable condition and thus less likely to damage City-owned equipment. RJN will use the video to prepare the rehabilitation schedule for next year's construction.

### **ANALYSIS:**

\$150,000.00 has been budgeted for both FY 2022 and FY 2023 for this project. Sewertech is a newer firm who has been aggressively pursuing these types of contracts and whom RJN, the City's consultants on the project, have had positive experience working with. Due to the bid being well below the budgeted amount for both years, it is

recommended to award the contract to Sewertech and allow them to perform both years work this year. The funds currently programmed for cleaning and televising in FY 2023 can be reallocated toward construction costs.

**DOCUMENTS ATTACHED**

- ✓ RJN Recommendation Letter
- ✓ Bid Tabulation

August 4, 2021

Mr. Alan Lange  
Director of Public Works  
City of Wood Dale  
404 N Wood Dale Rd  
Wood Dale, Illinois 60191

**SUBJECT: CITY OF WOOD DALE, 2021-2022 SEWER CLEANING AND TV PROGRAM - CONTRACT  
AWARD RECOMMENDATION**

Dear Mr. Lange:

Five (5) base bids were received for the above-referenced project. The lowest responsible base bid was received from Sewertech LLC of Schaumburg, IL in the bid amount of \$59,622.70. A summary of the five base bids received for this project are as follows:

|  |              |
|--|--------------|
| Sewertech, LLC .....                           | \$59,622.70  |
| Comprehensive Construction Solutions, LLC..... | \$99,881.95  |
| Visu-Sewer.....                                | \$113,782.76 |
| Sheridan Plumbing .....                        | \$195,921.95 |
| National Power Rodding .....                   | \$227,333.30 |

The engineer's estimate for the above referenced base bid was \$257,406.37. The lowest responsible bidder was approximately 76% under the engineer's estimate. Sewertech is a younger firm that is looking to gain more projects and respect among the industry which plays into their aggressive bid pricing. RJN Group has had numerous positive experiences working with Sewertech, LLC on previous projects in the field of sanitary sewer cleaning and televising and is confident in their ability to perform the work.

Therefore, we recommend that the City of Wood Dale award the contract for the 2021-2022 Sewer Cleaning and TV Program to Sewertech, LLC in the bid amount of \$59,622.70.

Please call me with any questions at 630.682.4700 ext. 1317.

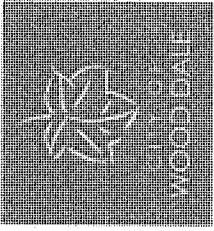
Sincerely yours,  
RJN GROUP, INC.



Yann Gallin  
Project Manager



Patrick Hulsebosch, E.I.T.  
Lead Project Engineer



404 N. Wood Dale Road  
 Wood Dale, IL 60191  
 PHONE: 630-787-3709  
 FAX: 630-766-3898

Location: The City of Wood Dale, 404 N. Wood Dale Road  
Project: 2021-2022 Sewer Cleaning and TV Program

Date: August 3, 2021  
Time: 10:15 A.M.

| Contractor:                               | Bid Amount:   | Bid Bond: | Addendum: |
|---|---------------|-----------|-----------|
| National Power Rodding                    | \$ 227,333.20 | ✓         | N/A       |
| Sewer Tech LLC                            | \$ 59,381.90  | ✓         | —         |
| Comprehensive Construction Solutions, LLC | \$ 99,881.85  | ✓         | —         |
| Visu-Sewer of IL, LLC                     | \$ 113,782.60 | ✓         | —         |
| Sheridan Plumbing + Sewer Inc             | \$ 195,921.85 | ✓         | —         |



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: Pretreatment Program Engineering Services  
Staff Contact: Alan Lange, Public Works Director  
Department: Public Works

**TITLE:** Approval of an Agreement between the City of Wood Dale and Robinson Engineering for the FY 2022 Management of the Industrial Pretreatment Program in an Amount Not to Exceed \$100,000

### **RECOMMENDATION:**

Staff Recommends Approval of an Agreement between the City of Wood Dale and Robinson Engineering for the FY 2022 Management of the Industrial Pretreatment Program in a Not-to-Exceed Amount of \$100,000.00.

### **BACKGROUND:**

The City of Wood Dale is responsible for administering a pretreatment program for the industrial users in our service area. Due to the high quantity of work associated with managing the program, the City has previously contracted with Robinson Engineering to provide services such as providing assistance with day-to-day pretreatment operations, industrial user monitoring and reporting, managing non-compliant operations, as well as additional services related to the ongoing USEPA audit of our program. These tasks are described in greater detail in the attached proposal.

### **ANALYSIS:**

Robinson Engineering is currently providing these services to the City in a competent manner. These services are properly allocated for within the Wastewater Division operating budget. Staff has budgeted \$190,000 for WWTP regulatory compliance within Fiscal Year 2022. The fees associated with day-to-day assistance with pretreatment operations will be billed monthly for the previous month's efforts at standard hourly rates and is not expected to exceed \$100,000 for the 12-month period. Work relating to management of non-compliant users will be billed separately as needed at standard hourly rates. These expenses can be reimbursed as well as additional revenues raised in the form of fees assessed to the non-compliant users.

### **DOCUMENTS ATTACHED**

✓ Pretreatment Program Proposal - Robinson Engineering

July 2, 2021

Mr. Brett Garelli  
WWTP Superintendent  
City of Wood Dale – Water/Wastewater Treatment  
269 W. Irving Park Road  
Wood Dale, Illinois 60191

**RE: CITY OF WOOD DALE  
Pretreatment Program Engineering Services Calendar Year 2021-2022**

Dear Mr. Garelli:

We appreciate the opportunity to continue to assist the City with its Pretreatment Program. The costs associated with the implementation for the 2021 – 2022 Program are summarized in this submittal. A description of the services associated with the implementation of the pretreatment program follows:

**PRETREATMENT PROGRAM SCOPE OF SERVICES**

**TASK 1 – Provide Assistance with Day-To-Day Pretreatment Operations**

The day-to-day implementation activities consist of a myriad of specific tasks. These tasks are identified below:

- Coordinate and prepare all correspondence to permitted Industrial Users, including review of all analytical reports.
- Review permitted Industrial Users correspondence and maintain comprehensive files.
- Coordinate scheduling with the City's contract laboratory for sample collection and analysis. Review laboratory data and prepare permitted Industrial User letters accordingly.
- Prepare self-monitoring reports for all Permitted Industrial Users on a semi-annual basis.
- Conduct annual permitted Industrial User inspections.
- Prepare follow-up letters to permitted Industrial Users for information required during site inspections.
- Review responses from follow-up letters and prepare any additional follow-up, if required.

- Issue discharge permit applications, review applications, request additional information as necessary.
- Prepare and issue discharge permits.
- Issue spill plan update forms.
- Review spill plans and comment as necessary.
- Update Industrial User database on an annual basis to include information provided by Building Department.
- Review any additional information from the City pertaining to the new Industrial User.
- Forward copies of all necessary documents to the City relating to the new Industrial Users.
- Prepare Annual Pretreatment Program Report.

#### **TASK 2 – Non-Compliance Operations**

The tasks identified for the Non-Compliance Operations assistance will be related to only those Industrial Users not in compliance with the City's Ordinance and Enforcement Response Plan. We will continue to provide the services described below, which will allow the City to maintain compliance with the USEPA requirements.

- Coordinate and prepare all correspondence to the Industrial Users following review of analytical reports or substandard report submissions concerning non-compliant Industrial Users.
- Prepare Notices of Violation for Industrial Users who demonstrate compliance violations. Send correspondence and Notices of Violation to City for signatures.
- Prepare Notices of Reporting Violation for Industrial Users who fail to file timely responses to the analytical Notice of Violations or fail to meet deadlines set by the City. Send correspondence and Notices of Reporting Violation to City for signatures.
- Send notice to the Industrial Users who demonstrate that they have violation of analytical data.
- Prepare "Compliance Meeting" form and data for compliance meetings.
- Attend necessary compliance meetings between the City and Industrial Users.
- Review responses to Notices of Violation and prepare reports and letters related to the instances of non-compliance.



- Track compliance with the City's Enforcement Response Plan.
- Calculate permitted Non-Compliance Status quarterly for each Categorical Industrial Users.
- Prepare annual publication of Industrial Users that exhibit Significant Non-Compliance status during the previous year.
- Prepare invoices for each non-compliant industry.

### **TASK 3 – Pretreatment Program Additional Services**

From time to time additional activities are requested to be undertaken by the regulating governmental bodies. Currently, the USEPA is in the late phases of conducting an audit of the City's pretreatment program. This has largely been a document submittal effort, but the Agency may require both additional information and industrial site visits with representatives of the USEPA, City and REL staff. Efforts associated with the required response will be billed separately.

### **PRETREATMENT PROGRAM FEES**

Task 1 - Our fee for the efforts described in Task 1 is anticipated to be \$100,000 for the twelve-month period beginning May 1, 2020. We will bill monthly for the previous months efforts at our standard hourly rates and for any expenses incurred.

Task 2 – Our fee for the efforts described in Task 2 will be billed under a separate project number at our standard hourly rates as well as for any expenses incurred. These invoices will be segregated to allow the City to use them to obtain reimbursement directly from the non-compliant industry for the associated expenses.

Task 3 – Our fee for the efforts described in Task 3 will be billed monthly for the previous months efforts at our standard hourly rates and for any expenses.

We thank you for this opportunity and look forward to assisting the City of Wood Dale. If this proposal is acceptable, please sign below and on the Standard Terms and Conditions page and return one copy to my attention.

If you have any questions or concerns, please do not hesitate to contact me at your convenience.

Very truly yours,  
**ROBINSON ENGINEERING, LTD.**

  
Steven G. Zehner P.E LEED-AP  
Senior Project Manager

ACCEPTED: **City of Wood Dale, Illinois**

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

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

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

**ROBINSON ENGINEERING, LTD ("REL")  
STANDARD TERMS AND CONDITIONS**

**CONTRACT** – These Standard Terms and Conditions may be amended, added to, superseded, or waived only if both REL and Client specifically agree in writing to any amendment of these Terms and Conditions ("Agreement").

**STANDARD OF CARE** - The standard of care for all professional engineering, survey or related professional services performed or furnished by REL under this Agreement will be the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality. REL makes no warranties, express or implied, under this Agreement or otherwise, in connection with REL's services on this Project.

**RELIANCE** – REL may, without liability, rely on the accuracy and completeness of information provided by Client, Client's consultants and any contractors, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards without the need for verification.

**CHANGES IN SCOPE** –The proposed fees constitute REL's estimate to perform the services required to complete the Project. However, all required services are not always definable in the initial planning. Accordingly, circumstances may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated, an equitable adjustment shall be made to REL's compensation and agreed to in writing by REL and Client.

**DELAYS** – REL shall complete its obligations within a reasonable time. If, through no fault of REL, such periods of time or dates are changed, or the orderly and continuous progress of REL's services is impaired, or REL's services are delayed or suspended, then the time for completion of REL's services, and the rates and amounts of REL's compensation, shall be adjusted equitably.

**SUSPENSION & TERMINATION** – Client may suspend the Project upon seven (7) days written notice to REL. If REL's services are substantially delayed through no fault of REL, REL may suspend services after giving seven (7) days written notice to Client. Either party may terminate this agreement upon thirty (30) days written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

Client shall remain liable for, and shall promptly pay REL for all services rendered to the date of such suspension/termination of services plus suspension/termination charges incurred by REL. Suspension/termination charges include the cost of assembling documents, personnel and equipment rescheduling or reassignment, and commitments made to others on Client's behalf.

**OPINION OF PROBABLE COSTS** - REL's opinions of probable Construction Cost are to be made on the basis of REL's experience and qualifications and represent REL's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since REL has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, REL cannot and does not guarantee that proposals, bids, or actual Construction Cost shall not vary from opinions of probable Construction Cost prepared by REL.

**REUSE OF PROJECT DELIVERABLES** - All design documents prepared or furnished by REL are instruments of service, and REL retains all ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Client shall not rely in any way on any Document unless it is in printed form, signed and sealed by REL or one of its Consultants.

**RIGHT OF ENTRY** – Client agrees to obtain legal right-of-entry on the property when entry to property is required by the work of this Agreement.

**ENVIRONMENTAL CONDITIONS OF SITE** - REL's scope of services does not include any services related to any environmental issues related to the site including petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, or regulated by any Federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

**RELATIONSHIP WITH CONTRACTORS** – REL shall not at any time supervise, direct, or have control over any contractor's work, nor shall REL have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, nor for safety precautions and programs in connection with the contractors' work, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work. REL neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work. REL shall have no authority to stop the work of any contractor on the Project.

**LIMITATION OF LIABILITY** – REL's total liability to Client for any and all claims for damages whatsoever, arising out of or in any way related to the Project or this Agreement, from any cause or causes, including but not limited to REL's negligence, errors, omissions, strict liability, or breach of contract, shall be limited as follows: REL's total liability shall not exceed the lesser of (1) \$1,000,000 (one million dollars) or (2) the remaining limits of any policy of insurance which provides coverage for the Client's cause or causes of action, such remaining limits to be measured as of the date judgment is entered against REL or the date when Client and REL otherwise settle/resolve the cause or causes of action.

**INSURANCE** – REL shall maintain insurance coverage for Professional, Commercial General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with any legal requirements and REL's business requirements. Certificates of insurance shall be provided by REL upon written request.

**MUTUAL WAIVER** – To the fullest extent permitted by law, Client and REL waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

**GOVERNING LAW, JURISDICTION & VENUE** – This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois. Further, the parties agree and consent to the exclusive jurisdiction of the courts of the State of Illinois for all purposes regarding this Agreement and that venue of any action brought hereunder shall be exclusively in Cook County, IL.

**NON-ENFORCEMENT** – A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**ASSIGNMENT** – A party shall not assign its rights or obligations pursuant to this Agreement without the express written permission and consent of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

**SURVIVAL** – All express representations, waivers, indemnifications, and limitations of liability included in this Agreement shall survive its completion or termination for any reason.

**THIRD PARTIES** - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or REL to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of Client and REL and not for the benefit of any other party.

**SEVERABILITY** - Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and REL, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision.

**STATUTE OF LIMITATIONS** – to the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence to run, no later than the date of Substantial Completion of this Agreement.

**CONFLICTS** - If a conflict exists between the Agreement provisions and these Standard Terms and Conditions then these Standard Terms and Conditions shall prevail and control.

Client's Initial: \_\_\_\_\_ Date: \_\_\_\_\_

10/2014



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: Roy Drive Water Main Lining  
Staff Contact: Alan Lange, Public Works Director  
Department: Public Works

**TITLE:** Approval of an Agreement with Fer-Pal Construction USA, LLC for Roy Drive Water Main Lining in an Amount Not to Exceed \$49,200

### **RECOMMENDATION:**

Staff Recommends Approval of an Agreement with Fer-Pal Construction USA, LLC for Roy Drive Water Main Lining in an Amount Not to Exceed \$49,200.

### **BACKGROUND:**

One goal of the Public Works Department is to reduce lost revenues from water loss and minimize staff time and equipment costs to repair water main breaks and leaks. Water main replacement or lining is an effective solution toward meeting this goal. The section of water main along Roy Drive between Apollo Court and Welter Drive has experienced numerous repairs for water main breaks and leaks over the past 10 years including 5 in November/December 2015 and 2 in 2021 amongst others. After consideration of relevant factors including location, length, water main size and age, constructability, and number of services staff believes lining this portion of main would be more cost effective than traditional excavation and replacement.

As with sewer main lining, water main lining is a trenchless method to reestablish the structural integrity of the main. According to the American Water Works Association's Manual of Water Supply Practices M28 Rehabilitation of Water Maines, Third Edition, when properly applied to an appropriate pipe, the life expectancy of a rehabilitated pipeline should be similar to that of a new pipeline – 50 to 100 years. Fer-Pal Construction is an industry leader in CIPP lining and does not require special fittings or sleeves to be used for future repairs. All materials and equipment used in this method are certified to NSF/ANSI Standard 61 relating to equipment and materials that come into contact with potable water.

**ANALYSIS:**

Staff has budgeted \$50,000 within the CIP for water main construction costs during FY 2022. Preliminary cost estimates for dig and replace at various locations proved to be cost prohibitive. For the reasons specified above, a proposal was sought from Fer-Pal construction to line this portion of main. In order to reduce costs and stay within budget, Public Works staff will perform a number of tasks including excavation of the access points, reestablishment of the main, chlorination and residual sampling, and restoration.

**DOCUMENTS ATTACHED**

- ✓ Fer-Pal Proposal
- ✓ Rendering
- ✓ Fer-Pal Brochure

# FER-PAL CONSTRUCTION USA, LLC CIPP BUDGET QUOTE

JULY 16, 2021

|                   |  |
|-------------------|--|
| <b>Customer:</b>  | Robinson Engineering                                     |
| <b>Attention:</b> | Mark Wesolowski, P.E., CFM                               |
| <b>Project</b>    | City of Wood Dale, IL - Roy Drive - 6" Water Main Lining |

Respectfully Submitted by: Chris Reynolds, Project Manager & Estimator, Fer-Pal Construction USA LLC

| ITEM            | DESCRIPTION                             | ESTIMATED QUANTITY | UNIT | UNIT PRICE   | EXTENDED TOTAL PRICE |
|-----------------|---|--------------------|------|--------------|----------------------|
| 1               | Mobilization                            | 1                  | LS   | \$ 2,500.00  | \$ 2,500.00          |
| 2               | CIPP Water Main Lining 6" - Up to 270ft | 1                  | LS   | \$ 46,700.00 | \$ 46,700.00         |
| <b>TOTAL \$</b> |   |                    |      |              | <b>49,200.00</b>     |

## INCLUSIONS AND EXCLUSIONS

|   | INCLUDED | EXCLUDED |
|---|----------|----------|
| Materials and Installation Method   | x        |          |
| Potable water certification : NSF 61  | x        |          |
| Lining Reports, DVD Inspection Videos   | x        |          |
| GPS As Builts   |          | x        |
| Laser Profile of inside the water main to determine the sizing of the water main                      | x        |          |
| Temporary Water By-Pass System to Service Residents or Commercial Industrial Buildings                | x        |          |
| Site permit, IEPA permit, DNR permit, parking permit, fire hydrants permit                            |          | x        |
| Traffic control supply or handling, flagpersons, signage and barrels                                  |          | x        |
| Excavation, backfill and all surface restoration of access pits                                       |          | x        |
| Free use at all times of the closet fire hydrant or other adequate source of water (water tank truck) |          | x        |
| Cutting of the water main to gain access to water main to be lined                                    |          | x        |
| Dewatering  | x        |          |
| Shoring, shoring systems, engineered drawings for shoring system                                      |          | x        |
| Supply and/or handling of Jersey Barriers, Steel Plates and the like                                  |          | x        |
| Cleaning residues disposal if required  |          | x        |
| Flushing, disinfection, water sampling and water main commissioning                                   |          | x        |
| Pressure Testing of CIPP-Lined pipe per ASTM F1216-16-8.3 Standards                                   | x        |          |
| Roads cleaning and landscaping  |          | x        |
| Pipe mechanical work  |          | x        |
| Tie-ins, connections  |          | x        |
| Bonds   |          | x        |



FER-PAL CONSTRUCTION USA, LLC • 1350 GASKET DRIVE • ELGIN, IL. 60120 • (847) 214-0103



# FER-PAL CONSTRUCTION USA, LLC CIPP BUDGET QUOTE

JULY 16, 2021

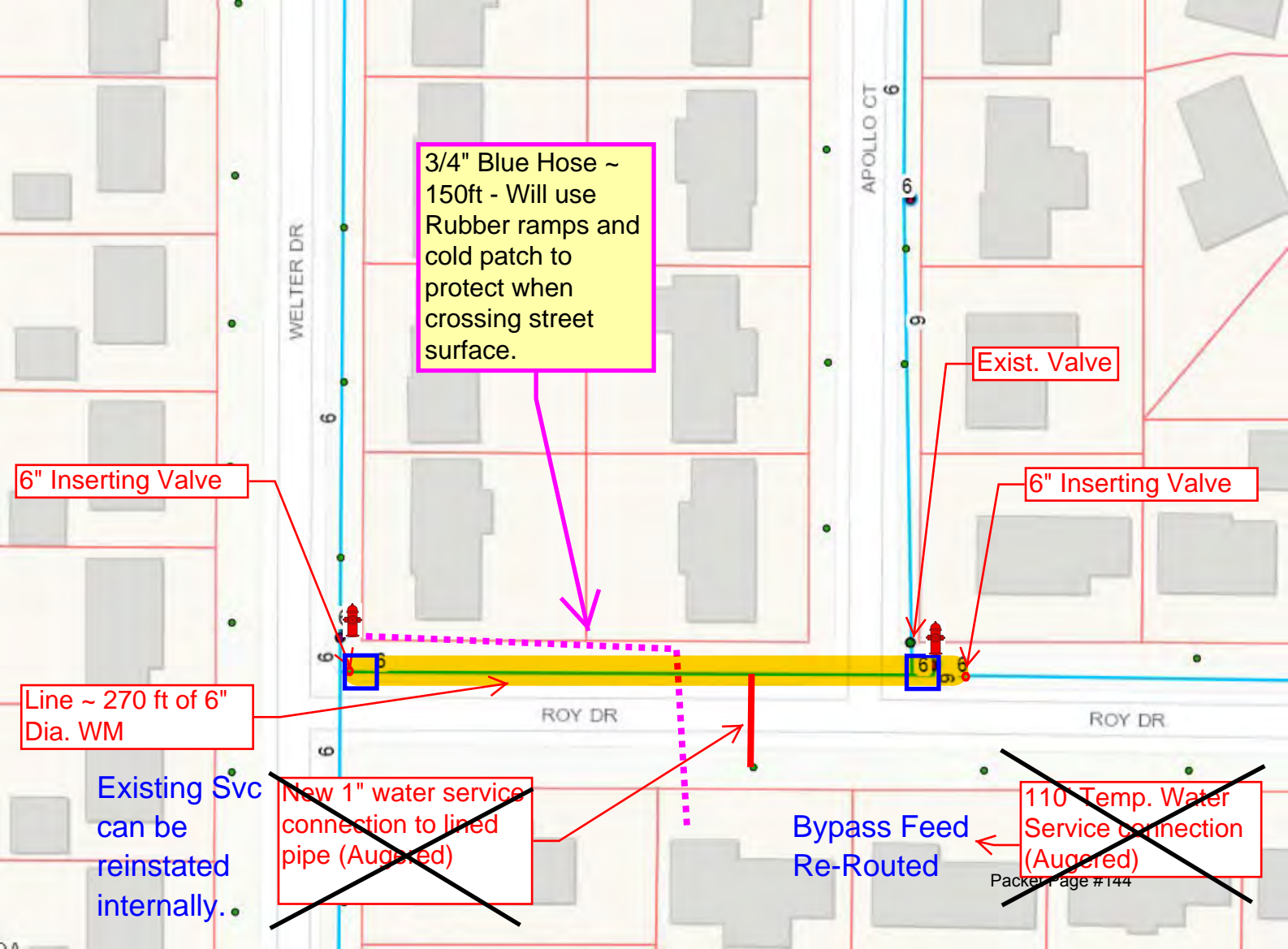
|            |  |
|------------|--|
| Customer:  | Robinson Engineering                                     |
| Attention: | Mark Wesolowski, P.E., CFM                               |
| Project    | City of Wood Dale, IL - Roy Drive - 6" Water Main Lining |

Respectfully Submitted by: Chris Reynolds, Project Manager & Estimator, Fer-Pal Construction USA LLC

## ADDITIONAL NOTES:

|   |   |
|---|---|
| A | Quote effective for 30 days   |
| B | Price subject to change based upon defined scope of work  |
| C | Price includes Temporary Bypass, Pipe Cleaning, Pre & Post CCTV Work, CIPP, and Pressure Testing.   |
| D | Price includes Temporary Bypass being run above-ground and ramped at street crossing(s); Price does <b>NOT</b> include any augering of temporary or permanent water services. If augering is required, that will need to be done by others.   |
| E | Price includes internal corking and reinstatement of existing service; see note 'D' regarding potential augering of new 1" service.   |
| F | Price does not include night and/or weekend work  |
| G | Access to Water Main, Tree and Shrub Clearing, Sign Removal & Replacement, Light Pole Support/Removal and Replacement, Excavation, Shoring, Traffic Control, Watermain Reconnection, Chlorination, Reinstatement and Restoration <b>BY OTHERS</b> .   |
| H | Price assumes the capability for our bypass connection crews to connect to operational exterior hose bibbs, interior house-side and city side valves, etc; Fer-Pal Construction is not responsible for inadequate or inoperable valves, hose bibbs, piping, connections, etc. Any repair required pre <b>OR</b> post bypass connection, and <u>any</u> costs associated with those repairs, will be the responsibility of the General Contractor or Owner.            |
| I | Price includes bacterial sampling and testing of the temporary bypass system (when applicable) only; any additional required sampling or testing will be need to be handled by the City or General Contractor   |
| J | Price includes access to water supply/hydrants within close proximity to each lining pit (maximum 200ft away); if water access is not within close proximity, water truck rental and truck driver costs will be borne by the City or Engineering Firm overseeing this project   |
| K | The required pits & shoring shall be a minimum of 6' x 8' with an <b>approximate quantity of TWO (2) pits</b> .   |
| L | Full and complete accessibility to lining pits for all Fer-Pal Construction trucks, trailers, equipment, etc. to be provided <b>BY OTHERS</b> for our cleaning, CCTV, Lining and Pressure Testing processes to be successful. Costs for additional backfill, earthwork around pits, etc to provide proper access for Fer-Pal Operations will be borne by the City or General Contractor.  |
| M | Price includes pressure testing horizontal water main. If the exposed end(s) of the water main is at any type of angle, the ability to properly and safely brace and secure the ends of the water main for pressure testing is significantly reduced, as is a successful test outcome. Additional costs for equipment, material, manpower, etc. to achieve a successful pressure test on angled/deflected water main will be borne by the city or General Contractor. |
| N | Price includes dewatering of the water main following our standard processes of using swabs (sponges) and rubberized squeegees when necessary. If the main requires additional dewatering measures outside of our standard processes (pumps & hoses, Vac Truck rental, etc) any associated costs will have to be borne by the city and/or general contractor.   |
| O | All pits shall be fully enclosed on all 4 sides, with <b>all annular space backfilled with clear stone</b> and systems shall meet OSHA approved standards for shoring.  |
| P | Access pits are to be excavated to a minimum of 1' below the invert of the existing watermain. In addition, up to 6" of clear stone shall be placed and maintained at the bottom of the access pits.  |
| Q | If any active infiltration is encountered in the existing main during the CIPP process, costs for any necessary additional excavations, internal repair sleeves, etc. will be considered T&M work and have to be borne by the city and/or general contractor.   |
| R | Price includes Temporary Bypass Maintenance for TWO (2) weeks. All additional costs for bypass maintenance that exceeds the Maintenance Period included in the price, including regular work hours, after hours and weekend on-call duties will be an additional cost to the General Contractor. No deductions/credits will be given for bypass maintenance ending prior to above noted time period.  |
| S | Dewatering of access pits will consist of daily pumping down of Access Pits when necessary during Ferpal CIPP Lining Processes Only; Any additional necessary dewatering and/or sustained dewatering (i.e. well points, pump pits, 24hr pumping) is excluded.   |
| T | Any unknown/unforseen bends, Vertical or Horizontal, encountered during initial cleaning and CCTV stages will need to be addressed and if excavation is required, it will be at the expense of the General Contractor   |
| U | If any active water services are deemed uncorkable due to the service being in a saddle, the service within the saddle is offset, the clock position of the service is not accessible, or other reasons, the cost to reinstate that service externally will be borne by the city.   |
| V | Bends greater than 45-degrees <b>must</b> be excavated at the expense of the General Contractor   |
| W | Minimum 25ft between bends is required  |





3/4" Blue Hose ~ 150ft - Will use Rubber ramps and cold patch to protect when crossing street surface.

6" Inserting Valve

Exist. Valve

6" Inserting Valve

Line ~ 270 ft of 6" Dia. WM

Existing Svc can be reinstated internally.

~~New 1" water service connection to lined pipe (Augered)~~

Bypass Feed Re-Routed

~~110 Temp. Water Service Connection (Augered)~~



## WHAT COMMUNITIES SAY ABOUT US



### Lindsay, resident

"The employees who have been working out in front of my house have been great. Very polite, respectful and most pleasant."

### Robert, Waterloo resident

"The FER-PAL employees have been extremely polite and working nonstop to try and complete this work. Whatever you guys are doing keep it up. Good Job!"

### Roland, Building Commissioner

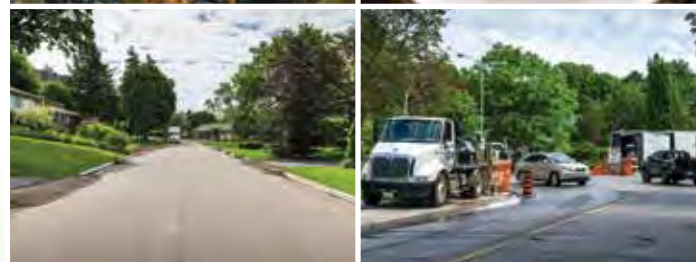
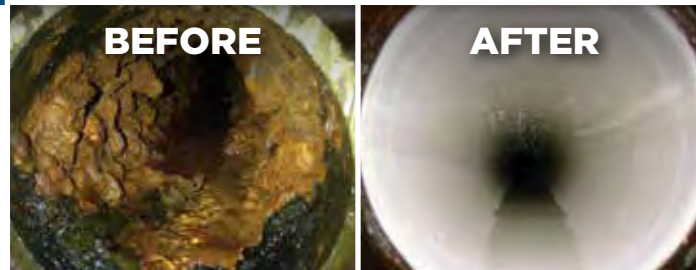
"FER-PAL was extremely polite and professional when working in our neighbourhood."

### FER-PAL INFRASTRUCTURE HEAD OFFICE

171 Fenmar Drive, Toronto, Ontario M9L 1M7  
Phone: 416-742-3713



Learn more about us and our projects at  
[ferpalinfrastructure.com](http://ferpalinfrastructure.com)



**Reliable, Sustainable,  
and Practical.**  
Clean Drinking Water Solutions



[ferpalinfrastructure.com](http://ferpalinfrastructure.com)

## THE BENEFITS OF AQUA-PIPE CIPP

**REDUCED COST VERSUS TRADITIONAL  
OPEN CUT CONSTRUCTION**

**GIVES WATERMAINS A NEW LIFE**

**MINIMIZES IMPACT TO TRAFFIC,  
BUSINESSES AND RESIDENTS**

**LOWERS GREENHOUSE GASES**



**Message from the CEO**  
**Shaun McKaigue**

At FER-PAL we think about how each project affects the true end user of a municipal drinking water system, the resident. We strive to look past conventional construction techniques in order to provide solutions that maximize the funding provided through taxes and fees while minimizing the impact to the surrounding environment.



Watch our videos at

[ferpalinfrastructure.com](http://ferpalinfrastructure.com)

Packet Page #145



**WHY USE CIPP OVER TRADITIONAL CONSTRUCTION?**

- Minimal excavation required
- Reduces physical and audible disruption to residents
- Ensures accessibility to businesses and properties
- Lower construction costs allowing utilities to rehab more with same budget
- Creates “superpipe” but by utilizing the remaining strength of the existing watermain
- Improves water quality by stopping rust build-up and preventing contact with lead
- Decreases operating costs by increasing flows

**THE AQUA PIPE ADVANTAGE**



- Stops watermain breaks and leaks
- Pulled-in-place system with wet-out of liner occurring on-site
- Ability to line multiple 45-degree bends
- Install new services via hot-tap with standard tapping tools
- Reassemble with standard fittings

FER-PAL is dedicated to providing towns with safe and clean drinking water.

Municipalities lead with innovation. Think rehabilitation before open cut.



**THREE STEPS TO GOING TRENCHLESS**



**STEP 1: PREPARATION**

We excavate an access hole to the existing watermain then clean and flush out the dirty and damaged watermain.

**STEP 2: REHABILITATION**

We pull a liner into the existing watermain and cure it in place.

**STEP 3: RETURN TO SERVICE**

We robotically reinstate each service from inside the newly rehabilitated watermain.





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## FINANCE & ADMINISTRATIVE COMMITTEE MINUTES

Committee Date: July 8, 2021  
Present: Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Absent: None  
Also Present: Mayor Pulice, Treasurer Porch, Clerk Curiale, Acting City Manager/Police Chief Vesta, B. Wilson, E. Cage, A. Lange  
Meeting Convened at: 7:30 p.m.

### APPROVAL OF MINUTES:

Ald. Susmarski made a motion, seconded by Ald. Sorrentino, to approve the Minutes of the June 10, 2021 meeting as presented. A roll call vote was taken with all members voting aye; motion carried.

### REPORT & RECOMMENDATION:

NEW TIF INVESTIGATION PROPOSAL

### DISCUSSION:

None

### VOTE:

Ald. Catalano made a motion, seconded by Ald. Susmarski, to approve an agreement with SB Friedman in an amount not to exceed \$39,245 for consulting services for a potential new TIF District. A roll call vote was taken with the following results:

Ald. Ames, Catalano, Curiale, Jakab, Messina, Sorrentino, Susmarski & Woods  
Nays: None  
Abstained: None  
Motion: Carried

### ITEMS TO BE CONSIDERED AT FUTURE MEETINGS:

- Special Service Area 11 Closeout - Summer



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**ADJOURNMENT:**

Ald. Susmarski made a motion to adjourn at 7:31 p.m., seconded by Ald. Jakab. A roll call vote was taken with all members voting aye. Motion carried.

*Minutes taken by Eileen Schultz*



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## **REQUEST FOR COMMITTEE ACTION**

Referred to Committee: August 12, 2021  
Subject: Patterson Dental EIA Renewal  
Staff Contact: Brad Wilson, Finance Director  
Department: Finance

**TITLE:** Renewal of an Economic Incentive Agreement (EIA) with Patterson Dental Supply, Inc.

### **RECOMMENDATION:**

Approve the draft Economic Incentive Agreement (EIA) with Patterson Dental Supply, Inc. commencing on January 1, 2022, for a 5-year term pending final legal review.

### **BACKGROUND:**

Beginning in 2017, the City was in a Sales Tax sharing agreement with Patterson. The agreement was for five years, expiring December 31, 2021. Patterson has reached out looking to renew the agreement with only the rebate amount changing.

|             | Current | Proposed |
|-------------|---------|----------|
| < 5% growth | 0.125%  | 0.25%    |
| > 5% growth | 0.25%   | 0.50%    |

### **ANALYSIS:**

Patterson has been located in the City for almost 23 years and would like to continue to do so. From the City's point of view, Patterson has consistently appeared on the City's Top 10 Sales Tax listing since 2006.

Due to the variable nature of this agreement, the City is not able to provide a true cost; however, the greater the growth by Patterson, the greater the revenue for both parties. That being said, staff feels that this deal will benefit both parties over the life of the agreement.

### **DOCUMENTS ATTACHED**

✓ Draft Agreement

**THE CITY OF WOOD DALE AND PATTERSON DENTAL SUPPLY, INC.**

**ECONOMIC INCENTIVE AGREEMENT**

THIS ECONOMIC INCENTIVE AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Wood Dale, DuPage County, Illinois, an Illinois municipal corporation (the “City of Wood Dale”) and Patterson Dental Supply, Inc. a Minnesota corporation (“Patterson Dental”).

WHEREAS, the City of Wood Dale has determined that it is essential to the economic and social welfare of the City of Wood Dale that it promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the City’s corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the Corporate Authorities of a municipality to enter into Economic Incentive Agreements relating to the development and retention of businesses within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the City of Wood Dale desire to improve the social and economic welfare of the City of Wood Dale and enhance the tax base of the City of Wood Dale to the benefit of the City of Wood Dale and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, Patterson Dental has been located within the municipal boundaries of the City of Wood Dale, Illinois for the past twenty-three (23) years; and

WHEREAS, Patterson Dental desires to expand its business and to remain within the municipal boundaries of the City of Wood Dale by renewing its lease of the facilities located at 1226 N. Michael Drive, Wood Dale, Illinois (hereinafter the “Property”); and

WHEREAS, retaining Patterson Dental within the municipal boundaries of the City of Wood Dale is expected to generate increased employment opportunities; and

WHEREAS, the City of Wood Dale desires to make it more economically feasible for Patterson Dental to remain within the municipal boundaries of the City of Wood Dale and to expand its operation at the Property by entering into an Economic Incentive Agreement with Patterson Dental, specifically pursuant to 65 ILCS 5/8-11-20; and

WHEREAS, the Ordinance approving this Agreement and authorizing its execution and delivery, the City of Wood Dale has complied with all of the requirements of Chapter 65 ILCS 5/8-11-20 by making the findings required therein to be made.

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Patterson Dental and the City of Wood Dale hereby agree as follows:



## SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recital had been set forth in full in the body of this Agreement.

## SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Commencement Date”: The date established pursuant to Section 3 of this Agreement.

“Corporate Authorities”: The Mayor and City Council of the City of Wood Dale.

“Effective Date of this Agreement” (“Effective Date”): The date referenced in the first paragraph on Page 1 of this Agreement.

“Economic Incentive Payment” (“EIP”): The amount of the non-shareholder contribution to capital payable to the Company pursuant to Section 4 of this Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of Patterson Dental or the City of Wood Dale including, without limitation, fire, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by Patterson Dental, embargoes, civil riot, floods or natural catastrophe, as further described in Section 5 of this Agreement.

“Local Sales Tax Receipts”: The share of the sales tax revenue which the City of Wood Dale receives from the State of Illinois which is paid by Patterson Dental in connection with Patterson Dental’s business at the Property pursuant to the Retailers’ Occupation Tax, the Service Occupation Tax, and the Use Tax; provided, however, for purposes of this Agreement, any portion of the State Use Tax which is distributed on the basis of population (per capita distribution) is not included in the term “Local Sales Tax Receipts”.

“Sales Taxes”: Any and all taxes imposed and collected by the State of Illinois pursuant to the Retailer’s Occupation Tax Act, the Service Occupation Tax Act, and the Use Tax Act; provided, however, for purposes of this Agreement any portion of the State Use Tax which is distributed on the basis of population (per capita distribution) is not included in the term “Sales Taxes”.

“Sales Tax Year”: For purposes of this Agreement, “Sales Tax Year” shall mean each twelve month period during the Term hereof, commencing January 1 and ending December.

SECTION 3. COMMENCEMENT OF CALCULATION OF ECONOMIC INCENTIVE PAYMENTS

The “Commencement Date” under this Agreement for the calculation of the EIP is hereby declared to be January 1, 2022.

SECTION 4. ECONOMIC INCENTIVE PAYMENT

A. Determination of Amount of Economic Incentive Payment (“EIP”). Starting on the Commencement Date, and for each Sales Tax Year during the Term hereof, the City of Wood Dale shall make an Economic Incentive Payment to Patterson Dental as hereinafter set forth.

1. Amount. The City of Wood Dale will rebate to Patterson Dental 0.50% of all taxable revenue generated at the Property if the growth of the Local Sales Tax Receipts is 5% or greater than the prior Sales Tax Year. The City of Wood Dale shall rebate 0.25% of all taxable revenue generated at the Property to Patterson Dental if the growth of the Local Sales Tax Receipts is less than 5% than the prior Sales Tax Year. The year-over-year growth of the Local Sales Tax Receipts shall be calculated and agreed to by the Parties on an annual basis to determine the amount of the EIP. An example of the calculation that shall be used to determine the EIP is shown in Exhibit A. Before Patterson Dental is entitled to receive any EIP, on an annual basis Patterson Dental shall, upon the conclusion of each Sales Tax Year, provide to the City of Wood Dale a copy of the sales tax information relating to revenue generated at the Property that Patterson Dental provides to the State of Illinois (Illinois Department of Revenue remittance form) and proof of payment for the immediately preceding Sales Tax Year. The documentation required is shown in Exhibit B.

B. City of Wood Dale Payment. Within sixty (60) days after having received the documentation referred to herein, the City of Wood Dale shall pay the applicable EIP for the particular Sales Tax Year, as calculated pursuant to Section 4.A.1, to Patterson Dental based on the records received from Patterson Dental pursuant to this Agreement, which the City of Wood Dale may verify with the Illinois Department of Revenue. If, for any reason, the State of Illinois fails to distribute the Local Sales Tax Receipts to the City of Wood Dale in sufficient time for the City of Wood Dale to make such annual payments, then the City of Wood Dale shall provide immediate notice of such fact to Patterson Dental. In such event, the City of Wood Dale shall make the required EIP payment within sixty (60) days after the date on which the City of Wood Dale actually receives the Local Sales Tax Receipts due to the City of Wood Dale for the applicable payment period. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Local Sales Tax actually paid by the State of Illinois, then the City of Wood Dale and Patterson Dental do hereby agree to cooperate with each other to accomplish such reconciliation.

C. Change in the Law. The City of Wood Dale and Patterson Dental acknowledge and agree that the City of Wood Dale’s obligation to pay the EIP to Patterson Dental is predicated on existing State law, including, without limitation, the Retailer’s Occupation Tax Act, the Service Occupation Tax Act, and the Use Tax Act. The City of Wood Dale and Patterson Dental further acknowledge that the General Assembly of the State has from time to time, considered proposals



to modify or eliminate the distribution of Local Sales Tax Receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law (“Change in Law”), and such Change in Law results in replacement taxes for all or a portion of the Local Sales Tax Receipts generated by Patterson Dental as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the City of Wood Dale’s actual receipt of its portion of such replacement taxes as well as the City of Wood Dale’s authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the City of Wood Dale’s obligation to pay the EIP shall not be a general debt of the City of Wood Dale on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Local Sales Tax Receipts received by the City of Wood Dale, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations and restrictions in this Agreement, the City of Wood Dale shall be liable to Patterson Dental for disbursement of monies hereunder only to the extent as stipulated in Section 4.A of this Agreement. Patterson Dental shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the City of Wood Dale to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the City of Wood Dale (unless the City of Wood Dale refuses to make such payment to Patterson Dental in violation of this Agreement and then only to the extent that the payment of such EIP is enforceable under law). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the City of Wood Dale in his or her individual capacity.

E. Consent to Payment to Patterson Dental. By signing this Agreement, Patterson Dental acknowledges and represents to the City of Wood Dale and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience the City of Wood Dale and its representatives are collectively referred to as the “City of Wood Dale Representatives”) that no representations, warranties, advice and/or statements of any kind or nature have been made by any of the City of Wood Dale Representatives that upon the Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the City of Wood Dale; and/or
2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto.

Except as otherwise provided herein, Patterson Dental waives, releases, acquits, and forever discharges each of the City of Wood Dale Representatives from any and all claims, liabilities, damages, causes of action, costs, expenses, expert witness fees, damages, suits debts, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, contracts, promises, judgments, executions, demands and obligations whatsoever, in law or in equity of any kind or nature whatsoever, known or unknown (collectively “Claims”) which Patterson Dental or its predecessors, successors and/or assigns ever had or may hereafter acquire

or which may be imposed upon or incurred by or asserted against any one or more of the City of Wood Dale Representatives by reason of a claim of reliance upon any action, failure to act, representations, warranties, advice and/or statements of any kind or nature that have been made or is claimed to have been made by any City of Wood Dale Representative and/or the payment by the City of Wood Dale of any and all economic incentives to Patterson Dental.

Patterson Dental, to the fullest extent provided for by law, at their sole cost and expense agree to and shall at all times and under all circumstances indemnify, protect, defend and save harmless the City of Wood Dale Representatives from and against all, claims, liens, damages, causes of action, and expenses (other than attorneys' fees as provided below) whether or not the claim, demand or action asserted be meritorious, and which results from or is alleged to arise out of or in connection with the payment of any and all of the economic incentives to Patterson Dental.

In the event any action or proceeding shall be brought against both Patterson Dental and against any one or more of the City of Wood Dale Representatives relating to this Agreement, its terms, or its enforceability, then, in such event, Patterson Dental and the City of Wood Dale Representatives, shall use their respective best efforts to collectively resist, protect and defend the same, each selecting and paying for their own legal counsel.

If an action is brought solely against any one or more of the City of Wood Dale Representatives and not against Patterson Dental, the City of Wood Dale shall resist, protect, and defend the same with legal counsel selected by the City of Wood Dale at its sole cost and expense. At its sole cost and expense, Patterson Dental shall have the right to hire its own attorneys to intervene in such action as provided by law. Patterson Dental shall not admit liability in any such matter on behalf of the City of Wood Dale Representatives without the written consent of each such City of Wood Dale Representative and the City of Wood Dale Representatives shall not admit liability for, nor enter into any compromise or settlement of any claim for which they are indemnified hereunder, without the prior written consent of Patterson Dental.

#### SECTION 5. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either Patterson Dental or the City of Wood Dale to perform any act or obligation, and Patterson Dental or the City of Wood Dale, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided Patterson Dental is not in default hereunder, the City of Wood Dale shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which Patterson Dental would otherwise be entitled hereunder for said period.

## SECTION 6. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either Party before any court, commission, board, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either Party to perform its obligations under, or otherwise to comply with, this Agreement (“Litigation”), the Party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other Party and shall thereafter keep the other Party fully informed concerning all aspects of the Litigation.

B. Defense. The City of Wood Dale and Patterson Dental do hereby agree to use their respective best efforts to defend the validity and enforceability of this Agreement and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken pursuant thereto. Except as provided for herein, each Party shall have the right to retain its own independent legal counsel, at its own expense. The City of Wood Dale and Patterson Dental do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

## SECTION 7. REMEDIES

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in accordance with the provisions of Section 10 of this Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other Party of the breach or alleged breach and allowing a period of 90 days for the curing of said breach or alleged breach provided, however, that in the event such violation or failure cannot be cured within said 90 day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

## SECTION 8. TERM

This Agreement shall be in full force and effect for a period of five (5) years after the Commencement Date. This Agreement shall, during its term, run with and bind Patterson Dental, and shall inure to the benefit of and be enforceable by Patterson Dental and the City of Wood Dale, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

## SECTION 9. RELEASE OF INFORMATION

As provided in Section 4.B, on an annual basis, Patterson Dental shall upon the conclusion of each Sales Tax Year, provide to the City of Wood Dale a copy of the sales tax information relating to revenue generated at the Property that Patterson Dental provides to the State of Illinois (Illinois Department of Revenue remittance form) and proof of payment for the immediately preceding Sales Tax Year. Such documents shall be sent to the attention of the Director of Finance for the City of Wood Dale. To the extent permitted by law, the City of Wood Dale shall maintain confidentiality of all such information received from Patterson Dental. In addition, prior to any payments to Patterson Dental pursuant to this Agreement, Patterson Dental shall, if requested by the City of Wood Dale or the State of Illinois, provide the State of Illinois with properly executed authorizations granting the City of Wood Dale the right to access the sales tax records of Patterson Dental, as necessary. Patterson Dental acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the City of Wood Dale to Patterson Dental pursuant to this Agreement. Patterson Dental further covenants and agrees, that upon the request of the City of Wood Dale, Patterson Dental shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and Patterson Dental in order to release the above-described sales tax information to the City of Wood Dale. Patterson Dental agrees and acknowledges that any disbursements made by the City of Wood Dale pursuant to this Agreement can only be made from and to the extent of the data submitted in accordance with Section 4.B. Patterson Dental agrees to use best efforts to make the obligations contained in this Agreement a part of any contract to sell any portion or all of Patterson Dental.

## SECTION 10. ENFORCEMENT

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement provided, however, that Patterson Dental agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed City of Wood Dale officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In the event of a judicial proceeding brought by any Party to this Agreement against any other Party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing Party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any Party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other Party. Unless prohibited by law, any delay by any Party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver

of such rights in any way, it being the intent of this provision that such Party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any Party with respect to any specific default by any other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. In the event of a material breach of this Agreement by Patterson Dental during the Term of this Agreement, the City of Wood Dale shall notify Patterson Dental that a material breach has occurred and provide Patterson Dental with a reasonable cure period of 90 days. If after the reasonable cure period a material breach still exists, Patterson Dental shall be liable for and shall immediately refund to the City of Wood Dale any and all EIP's received pursuant to this Agreement during the year of such material breach and in such event, the City of Wood Dale shall have no obligation of any kind or nature whatsoever to make any further EIP to Patterson Dental.

#### SECTION 11. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment, and of the successors of such Party.

#### SECTION 12. TRANSFER OR ASSIGNMENT

Subject to the terms and conditions of this Section, Patterson Dental shall have the right to assign or transfer this Agreement or all of Patterson Dental rights or interests hereunder, upon the written consent of the City of Wood Dale, which consent shall not be unreasonably withheld, and any such assignment or transfer may be absolute, conditional or in consideration of or as additional security for any financing or equipment lease arrangement into which Patterson Dental may enter. Patterson Dental rights under this Section 12 are subject to the following terms and conditions:

A. No such assignment or transfer shall release Patterson Dental from any of its obligations under this Agreement; and

B. Except in the case of an assignment or transfer which meets the criteria set forth in one of paragraphs 1, 2, 3 or 4 below, an assignment or transfer of this Agreement or rights or interests hereunder shall be voidable at the City of Wood Dale's option within thirty (30) days after the City of Wood Dale receives notice of such assignment or transfer, that is, an assignment or transfer of the Agreement or rights or interests hereunder shall be voidable by the City of Wood Dale within such thirty (30) day period as aforescribed unless:

1. the City of Wood Dale has given its consent to such assignment or transfer, and the City of Wood Dale shall not unreasonably delay or withhold its consent; or
2. the assignment or transfer is in consideration of or as additional security for

any financing or equipment leasing arrangement entered into by Patterson Dental, or

3. the assignment or transfer is to a corporation or other entity into which or with which Patterson Dental merges or consolidates, a parent person, corporation or other entity which owns fifty (50%) or more of Patterson Dental's capital stock or other ownership interests, or a subsidiary corporation or other entity of which Patterson Dental owns fifty (50%) or more of the capital stock or other ownership interests, or a person, corporation or other entity which shall control, be controlled by or be under common control with Patterson Dental; and the assignee or transferee assumes all of Patterson Dental obligations under this Agreement; or
4. the assignment or transfer is to a person corporation or other entity which acquires substantially all of the assets of Patterson Dental and the assignee or transferee assumes all of Patterson Dental' obligation under this Agreement, provided that at the time such assignment or transfer is made, such assignment, or transfer itself does not violate any then effective law of general application of the United States of America or the State of Illinois or any then effective ordinance of general application of the City of Wood Dale concerning so called "conflicts of interest" or "unlawful contracts" (collectively, "General Application Laws"), and further provided that if this Agreement were then being entered into between the City of Wood Dale and such person, corporation or other entity, this Agreement would not violate any of the General Application Laws.

### SECTION 13. REPRESENTATIONS AND WARRANTIES

In order to induce the City of Wood Dale to enter into this Agreement and to grant the rights herein provided for Patterson Dental hereby warrants and represents to the City of Wood Dale as follows:

A. Patterson Dental is a Minnesota corporation duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. Patterson Dental has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.

C. All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial or administrative bodies, governmental authorities, or other Parties including specifically, but without limitation, all secured Parties referenced on Exhibit C regarding the execution and delivery of this Agreement have been obtained.

D. That, if requested by the City of Wood Dale, it has or will provide any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the City of Wood Dale,) that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

E. The individuals executing this Agreement on behalf of Patterson Dental have the power and authority to execute and deliver this Agreement on behalf of Patterson Dental.

F. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of Patterson Dental; (ii) will not result in a breach or default under any agreement to which Patterson Dental is a Party or to which Patterson Dental, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which Patterson Dental in whole or in part is or are subject.

#### SECTION 14. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and any and all attached hereto constitute the complete agreement of the Parties regarding Economic Incentive Payments out of a portion of the Local Sales Tax Receipts to Patterson Dental and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of Patterson Dental and by the Corporate Authorities by resolution duly adopted, and executed and delivered by the authorized representative of each Party. The City of Wood Dale shall cause a memorandum of this Agreement to be recorded with the DuPage County Recorder and shall file same with the State of Illinois.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three business days after deposit thereof in any main or branch United States Post Office, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the Parties, respectively, as follows:

For notices and communications to the City of Wood Dale:

Jeffrey Mermuys  
City Manager  
City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, IL 60191

Brad Wilson  
Finance Director  
City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, IL 60191

With a copy to:

Patrick K. Bond  
Bond, Dickson & Associates, P.C.  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187

For notices and communications to Patterson Dental:

Michelle Bragg, VP Tax  
Patterson Dental Supply, Inc.  
1031 Mendota Heights Road  
Mendota Heights, MN 55120

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such Party, but no such notice of change of address shall be effective until actually received.

D. Governing Law/Venue. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the internal laws, and not the conflict of law rules, of the State of Illinois. Any disputes arising hereunder shall be litigated in the Eighteenth Judicial Circuit Court of DuPage County.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Amendments or Modifications of Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third Party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Any and all Exhibits attached to this Agreement are incorporated herein and made a part hereof by this reference.

K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together constitute the Agreement.



L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity there of shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

City of Wood Dale

Patterson Dental Supply, Inc.

By: \_\_\_\_\_  
Annunziato Pulice, Mayor  
City of Wood Dale

By: \_\_\_\_\_  
Michelle Bragg, VP Tax  
Patterson Dental Supply, Inc.

ATTEST:

ATTEST:

\_\_\_\_\_  
Lynn Curiale, City Clerk  
City of Wood Dale

\_\_\_\_\_  
Les B. Korsh, Secretary  
Patterson Dental Supply, Inc.

EXHIBIT A  
EXAMPLE OF CALCULATION FOR EIP

[TO BE INSERTED BY CITY]

EXHIBIT B

DOCUMENTATION REQUIRED ANNUALLY  
(12 Monthly Forms to be Submitted at the End of the Tax Year)



Illinois Department of Revenue  
**ST-2 Multiple Site Form**  
Attach to Form ST-1

REV 01 (R-11/11)  
FORM 009

Account ID: \_\_\_\_\_ This form is for: 07/01/2015 - 07/31/2015

|                  |                              |                                     |                                      |
|------------------|------------------------------|-------------------------------------|--------------------------------------|
| Location code    | _____                        | General merchandise                 | 4a _____ x 0.0825 = 4b _____         |
| Location         | Wood Dale _____              | Food, drugs, and medical appliances | 5a _____ x 0.0175 = 5b _____         |
| Loc DBA name     | _____                        | Receipts taxed at other rates       | 8a _____ \$0.00      8b _____ \$0.00 |
| Site address     | _____                        |                                     |                                      |
| City, State, ZIP | WOOD DALE      IL      60191 |                                     |                                      |

EXHIBIT C  
SECURED PARTIES

[TO BE INSERTED]