



# VILLAGE OF BENSENVILLE

Village Board  
President  
Frank Soto

Trustees  
Morris Bartlett  
Robert "Bob" Jarecki  
Martin O'Connell III  
Oronzo Peconio  
JoEllen Ridder  
Henry Wesseler

Village Clerk  
Susan Janowiak

Village Manager  
Michael Cassady

## Village of Bensenville, Illinois BOARD OF TRUSTEES MEETING AGENDA

**6:30 P.M. Tuesday, March 12, 2013**

Bensenville Village Hall, 12 S. Center Street, Bensenville IL 60106

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC COMMENT (3 minutes per person with a 30 minute meeting limitation)
- V. APPROVAL OF MINUTES  
February 26, 2013
- VI. WARRANT – March 12, 2013 #13/05 \$690,979.33
- VII. **CONSENT AGENDA – CONSIDERATION OF AN “OMNIBUS VOTE”**
  1. *Ordinance Amending Title 12 Telecommunications of the Village Code to Clarify Financial Obligations of Telecommunications Firms*
  2. *Resolution Approving the Execution of a License Agreement With Sidera Networks, LLC Pursuant to Title 12- Telecommunications of the Bensenville Village Code*
  3. *Resolution Concerning the Determination of the Bensenville Village Board that Change Order Number Four (Final – Phase I) With the Joint Venture of A-Lamp Concrete Contractors/John Neri Construction Company Resulting in a Decrease of \$823,545.80 is Required for the North Business District Reconstruction Project for a Revised Contract Cost of \$10,703,163.96*
  4. *Resolution Authorizing the Execution of Amendment#1 to the Engineering Services Agreement With Civiltech Engineering, Inc. for the Northern Business District Reconstruction Project in the Amount of \$96,783*
  5. *Resolution Authorizing the Execution of Amendment #2 to the Engineering Services Agreement With Civiltech Engineering, Inc. for the Northern Business District Reconstruction Project in the Amount of \$591,853*
  6. *Resolution Concerning the Determination of the Bensenville Village Board that Change Order Number One (Final) With Vian*

*Construction Company, Inc. For an Increase of \$74,427.34 is Required for the County Line Road Watermain Replacement Project for a Revised and Final Contract Cost of \$370,645.94*

7. *Resolution Authorizing the Execution of a Contract With HD Supply Waterworks, LTD. for the Water Meter Replacement Program in the Amount \$2,303,651.70*

## **VIII. REPORTS OF STANDING COMMITTEES**

### **A. Community and Economic Development Committee**

1. *Ordinance of the Village of Bensenville, Illinois Authorizing the Acquisition of Parcels Commonly Known as “10 North Center Street and 111 West Main Street” For Corporate Purposes*

### **B. Infrastructure and Environment Committee**

1. *Approval of Two Agreements with IDOT and the Village of Bensenville for the Illinois Route 83 Improvement Project (Contracts 60V54 & 60N54) and the Corresponding Ordinances:*

*A. Resolution Authorizing the Village of Bensenville to Enter Into an Agreement With the State of Illinois Department of Transportation Concerning Road Improvements to Illinois Route 83 (IDOT Contract 60V54)*

*B. Resolution Authorizing the Appropriation of Funds in the Fiscal Year 2013 for the Improvement of Illinois Route 83 (IDOT Contract 60V54)*

*C. Ordinance Restricting Parking Along Illinois Route 83 Within the Village of Bensenville (IDOT Contract 60V54)*

*D. Ordinance Prohibiting the Discharge of Sanitary and Industrial Waste Into Any Storm Sewer or Drainage Facility Constructed as a Part of the Illinois Route 83 – FAP344 Improvement (IDOT Contract 60V54)*

*E. Ordinance Prohibiting Encroachments Within the State of Illinois Right of Way Along Illinois Route 83 – FAP344 (IDOT Contract 60V54)*

*F. Resolution Authorizing the Village of Bensenville to Enter Into an Agreement With the State of Illinois Department of Transportation Concerning Road Improvements to Illinois Route 83 (IDOT Contract 60N49)*

*G. Resolution Authorizing the Appropriation of Funds in Fiscal Year 2013 for the Improvement of Illinois Route 83 (IDOT Contract 60N49)*

*H. Ordinance Restricting Parking Along Illinois Route 83 Within the Village of Bensenville (IDOT Contract 60N49)*

- I. Ordinance Prohibiting the Discharge of Sanitary and Industrial Waste Into Any Storm Sewer or Drainage Facility Constructed as a Part of the Illinois Route 83 – FAP344 Improvement (IDOT Contract 60N49)*
- J. Ordinance Prohibiting Encroachments Within the State of Illinois Right of Way Along Illinois Route 83 – FAP344 (IDOT Contract 60N49)*

- C. Administration, Finance and Legislation Committee – No Report
- D. Public Safety Committee – No Report
- E. Recreation and Community Building Committee – No Report
- F. Technology Committee – No Report

**IX. REPORTS OF VILLAGE OFFICERS:**

**A. PRESIDENT'S REMARKS:**

- 1. Jean White's Request for Earth Day Participation on March 23<sup>rd</sup>*
- 2. Presentation of ComEd's Annual Report*

**B. VILLAGE MANAGER'S REPORT:**

**C. VILLAGE ATTORNEY'S REPORT:**

**X. UNFINISHED BUSINESS**

**XI. NEW BUSINESS**

**XII. EXECUTIVE SESSION**

- A. Review of Executive Session Minutes [5 ILCS 120/2 (C)(21)]
- B. Personnel [5 ILCS 120/2(C)(1)]
- C. Collective Bargaining [5 ILCS 120/2 (C)(2)]
- D. Property Acquisition [5 ILCS 120/2(C)(5)]
- E. Litigation [5 ILCS 120/2(C)(11)]

**XIII. MATTERS REFERRED FROM EXECUTIVE SESSION**

**XIV. ADJOURNMENT**

**Village of Bensenville**  
Board Room  
12 South Center Street  
Bensenville, Illinois 60106  
Counties of DuPage and Cook

**MINUTES OF THE VILLAGE BOARD OF TRUSTEES MEETING**  
February 26, 2013

**CALL TO ORDER:** 1. President Soto called the meeting to order at 6:49 p.m.

**ROLL CALL:** 2. Upon roll call by Village Clerk, Susan Janowiak, the following Board Members were present:

Bartlett, Jarecki, Peconio, Ridder, Wesseler

Absent: O'Connell

A quorum was present.

*Trustee Ridder attended the meeting via conference call.*

**PUBLIC COMMENT:** There was no public comment.

**APPROVAL OF MINUTES:** 3. The February 12, 2013 Village Board Meeting minutes were presented.

Motion: Trustee Wesseler made a motion to approve the minutes as presented. Trustee Bartlett seconded the motion.

All were in favor. Motion carried.

**WARRANT NO. 13/04:** 4. President Soto presented Warrant No. 13/04 in the amount of \$751,283.88.

Motion: Trustee Bartlett made a motion to approve the warrant as presented. Trustee Jarecki seconded the motion.

**ROLL CALL:** AYES: Bartlett, Jarecki, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Minutes of the Village Board Meeting  
February 26, 2013 Page 2

Motion: 5. Trustee Wesseler made a motion to set the Consent Agenda as presented. Trustee Bartlett seconded the motion.

All were in favor. Motion carried.

**Ordinance No.  
6-2013:**

**An Ordinance Amending Village Code, Title 5, Traffic and Motor Vehicles, Chapter 3, Streets and Intersections, Section 5-3-9, Stop Intersections, to Provide for Stop Signs at the Intersection of Marshall from Glendale Street to Itasca Street. (Consent Agenda)**

**Ordinance No.  
7-2013:**

**An Ordinance Amending Village Code, Title 5, Traffic and Motor Vehicles, Chapter 2, No Parking Zones, Section 5-2-13G(2), No Parking During School Days, Student Pick Up Only and 502014B, Limited Parking, 2 Hour Parking Except Saturday, Sunday and Holidays for the South Side of Memorial from Mason Street to York Road. (Consent Agenda)**

**Resolution No.  
R-11-2013:**

**A Resolution Authorizing the Village Manager to Enter into a Contract with Phenom Security Integrators for the Purchase and Installation of Two (2) Emergency Blue Lights Phones for the Redmond Park Complex. (Consent Agenda)**

**Resolution No.  
R-12-2013:**

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with Diversified Audio Group Inc. for the Music in the Park 2013 Series in the Not to Exceed Amount of \$17,875.00. (Consent Agenda)**

**Resolution No.  
R-13-2013:**

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with American Mobile Stating, Inc. for the Music in the Park 2013 Series in the Not to Exceed Amount of \$16,225.00. (Consent Agenda)**

**Resolution No.  
R-14-2013:**

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with Entertainment Management Group for the Music in the Park 2013 Series in the Not to Exceed Amount of \$29,700.00. (Consent Agenda)**

**Resolution No.**

R-15-2013:

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with Melrose Pyrotechnics, Inc. for Liberty Fest 2013 in the Not to Exceed amount of \$40,000.00. (Consent Agenda)**

**Resolution No.**

R-16-2013:

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with American Mobile Staging, Inc. for Liberty Fest 2013 in the Not to Exceed amount of \$12,860.00. (Consent Agenda)**

**Resolution No.**

R-17-2013:

**A Resolution Authorizing the Execution of an Agreement and Purchase Order with Entertainment Management Group for Liberty Fest 2013 in the Not to Exceed amount of \$5,000.00. (Consent Agenda)**

**Resolution No.**

R-18-2013:

**A Resolution Authorizing the Execution of an Agreement and Purchase Order JGH Technologies on the Not to Exceed Amount of \$89,617.52. (Consent Agenda)**

Motion:

Trustee Wesseler made a motion to approve the Consent Agenda as presented. Trustee Jarecki seconded the motion.

**ROLL CALL:**

AYES: Bartlett, Jarecki, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**Ordinance No**

8-2013:

6. President Soto gave the summarization of the action contemplated in **Ordinance No. 8-2013** entitled **An Ordinance Granting Approval of a Planned Unit Development and Conditional Use Permit for Properties Commonly Known as 308-460 West Irving Park Road, Bensenville, Illinois, Jim's Plaza, LLC.**

*President Soto announced there was a condition added to the ordinance during the Community & Economic Development Committee.*

Motion:

Trustee Wesseler made a motion to adopt the ordinance as presented. Trustee Peconio seconded the motion.

**ROLL CALL:** AYES: Bartlett, Jarecki, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**Ordinance No  
9-2013:**

7. President Soto gave the summarization of the action contemplated in **Ordinance No. 9-2013** entitled **An Ordinance Granting Approval of a Planned Unit Development (PUD) and Conditional Use Permit for Properties Commonly Known as 525, 533, 549, and 573 North Meyer Road, Bensenville, Illinois, Keco Leasing, LLC.**

**Motion:** Trustee Bartlett made a motion to adopt the ordinance as presented. Trustee Jarecki seconded the motion.

**ROLL CALL:** AYES: Bartlett, Jarecki, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**Ordinance No  
10-2013:**

8. President Soto gave the summarization of the action contemplated in **Ordinance No. 10-2013** entitled **An Ordinance Approving the First Amendment to the Village of Bensenville Fiscal Year 2013 Budget.**

**Motion:** Trustee Wesseler made a motion to adopt the ordinance as presented. Trustee Bartlett seconded the motion.

**ROLL CALL:** AYES: Bartlett, Jarecki, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**PRESIDENT'S  
REMARKS:**

President Soto thanked Governor Quinn for coming to Bensenville to announce the groundbreaking of the improvements to Irving Park Road and York Road.

President Soto thanked Treasurer, Dan Rutherford, for bringing the I-Cash program to Bensenville.

Minutes of the Village Board Meeting  
February 26, 2013 Page 5

President Soto thanked State Representative, Tammy Duckworth, for her presence in Bensenville over the weekend.

President Soto thanked State Representative, Mike Quigley, for his participation in the Honor Flight Hockey Game held at the Edge Ice Arena in Bensenville over the weekend.

**MANAGERS**

**REPORT:**

Village Manager, Michael Cassady, had no report.

**VILLAGE ATTORNEY**

**REPORT:**

Village Attorney, Mary Dickson, had no report.

**UNFINISHED**

**BUSINESS:**

There was no unfinished business.

**NEW BUSINESS:**

There was no new business.

**EXECUTIVE**

**SESSION:**

Village Attorney, Mary Dickson, stated there was not a need for Executive Session.

**ADJOURNMENT:**

Trustee Bartlett made a motion to adjourn the meeting. Trustee Jarecki seconded the motion.

All were in favor. Motion carried.

President Soto adjourned the meeting at 7:10 p.m.

Susan Janowiak

Village Clerk

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville this \_\_\_\_\_ day, March, 2013

**TYPE:** Ordinance      **SUBMITTED BY:** Joe Caracci      **DATE:** 03/04/2013

**DESCRIPTION:** Ordinance amending the Village Code to clarify financial obligations of firms looking to install telecommunication utilities in the public right-of-way

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input checked="" type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input checked="" type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/>	<i>Vibrant Major Corridors</i>

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**COMMITTEE ACTION: I&E (unanimous approval)**

**DATE: 02/26/2013**

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**BACKGROUND:** Over the past several months, several applicants have sought approval for the installation of fiber optic facilities within the public right-of-way (ROW). Some applicants are seeking to install facilities through the Village without service to residents or businesses while others are installing for the sole purpose of servicing a resident or business within our corporate limits. Regardless of their reason to install facilities, the Village has the responsibility to manage all utilities within the public ROW. Title 12 (Telecommunications) of the Village Code was ordained in 1997 under Ordinance 58-97 and established criteria based from a model ordinance recommended through DMMC.

As this section of our Village Code was developed from the model ordinance, there are certain changes that would benefit the Village and our proposed customers. The Code was evaluated by staff and legal counsel and changes are recommended at this time.

**KEY ISSUES:** The proposed changes relate to the process for applying for permission to install new facilities in the ROW and the associated fees and securities. In an effort to streamline the process, we have attempted to split applicants into three categories – installations less than 1,000 linear feet, installations greater than 1,000 linear feet serving Bensenville customers (Franchise), and installations greater than 1,000 linear feet not serving Bensenville customers (License). Proposed changes include:

1. Reducing the application fee from \$2,500 for all applicants to \$50 (less than 1,000 feet) and \$250 (greater than 1,000 feet)
2. Assigning an Annual Fee to each applicant based on the length of install. Our general rule of thumb has been identified at \$1 per linear foot of installation.
3. Reducing the Permit fee from \$2,500 or 3% of the construction cost to \$1,000 or 3% of the construction cost. We feel this compensation is more appropriate for the smaller installations.
4. Change the Security Fund from \$50,000 for all applicants to 5% of the actual construction cost (less than 1,000 feet) and 10% of the actual construction cost (greater than 1,000 feet). This security fund is held by the Village as long as the facility occupies ROW.

Our legal team is in the process of developing boiler plate Franchise Agreements and License Agreements pending the outcome of the Committee and Village Board decisions.

**RECOMMENDATION:** Staff recommends approval of the proposed Code modifications.

**ALTERNATIVES:** Discretion of the Village Board

**BUDGET IMPACT:** There are no immediate budget impacts. Costs and revenue generation will depend on applications

**ACTION REQUIRED:** Approval of an Ordinance to Amend Title 12 Telecommunications of the Bensenville Village Code

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 12 TELECOMMUNICATIONS  
OF THE BENSENVILLE VILLAGE CODE**

**WHEREAS**, the Village of Bensenville (hereinafter the “Village”) is a duly organized and existing Illinois municipality pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, in 1997, the Village Board adopted Ordinance 1-97, which set forth regulations for installation of telecommunications facilities in the public right of way within the Village, and which was thereafter codified as Title 12 of the Village’s Code of Ordinances, titled Telecommunications; and

**WHEREAS**, over the past several months, several applicants have sought approval for installation of such facilities in the public right of way, seeking to install fiber optic networks of several hundred feet to several thousands of feet; and

**WHEREAS**, in investigation of the different applications, Village staff has reviewed the provisions set forth in Title 12 Telecommunications, and is recommending amendments to provisions set forth therein particularly as they relate to fees, bonds and costs payable to the Village, to better meet the needs of the applicants seeking authorization to work within the right of way; and

**WHEREAS**, the President and Board of Trustees, upon this review, find that it is in the best interest of the Village and its citizens and vendors seeking to work within the Village to amend Title 12, Telecommunications, of the Village Code as recommended by Village staff and as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

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

**SECTION TWO:** That Chapter 12, Telecommunications of the Bensenville Village Code is amended as follows:

**12-6-1: PURPOSE:**

It is the purpose of this Chapter to provide for the payment and recovery of all direct and indirect costs and expenses of the Village related to the enforcement and administration of this Title.

**12-6-2: APPLICATION AND REVIEW FEE:**

A. Any applicant for a license or franchise pursuant to Chapter 3 or 4 of this Title shall pay an application fee as follows: of two thousand five hundred dollars (\$2,500.00)

1. Installations which will impact less than one thousand lineal feet of right of way shall pay fifty and 00/100 dollars;
2. Installations which will impact more than 1,000 lineal feet right of way shall pay two hundred and fifty dollars (\$250.00) or three percent (3%) of the estimated cost of applicant's proposed telecommunications facilities, as certified by the applicant's professional engineer, whichever is greater.

B. The application and review fee shall be deposited with the Village as part of the application filed pursuant to Chapter 3 or Chapter 4 of this Title.

C. An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of its application and review fee written request, be refunded the balance of its deposit under this Section, less:

1. One thousand one hundred twenty five dollars (\$1,125.00); and
2. All ascertainable costs and expenses incurred by the Village in connection with the application.

**12-6-4: RESERVED COMPENSATION FOR PUBLIC WAYS (ANNUAL FEE):**

The Village reserves its right to annually fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or

franchise grantee. Said fee shall be fixed at not less than one dollar per lineal foot of the planned installation. Nothing in this Chapter shall prohibit the Village and a grantee from agreeing to the compensation to be paid for the granted property rights. In the case of applications which seek to install telecommunications facilities which encompass less than 1000 lineal feet, the public works director shall be authorized to determine the applicable fee to be paid and to allow use of the right of way by permit, rather than license or franchise agreement.

#### **12-6-5: COMPENSATION FOR VILLAGE PROPERTY:**

This Section has been repealed.

~~If the right is granted, by lease, license, franchise or other manner, to use and occupy Village property for the installation of telecommunications facilities, the compensation to be paid shall be fixed by the Village. (Ord. 1-97, 2-4-1997)~~

#### **12-6-6: CONSTRUCTION PERMIT FEE:**

Prior to issuance of a construction permit, the permittee shall pay a permit fee equal to ~~one two thousand five hundred~~ dollars (\$2,500.00) (\$1,000.00) or three percent (3%) of the estimated cost of constructing the telecommunications facilities, as certified by the applicant's engineer and approved by the Village Engineer, whichever is greater.

#### **12-6-7: ANNUAL FEES:**

This Section has been repealed.

~~Unless otherwise agreed in a license or franchise grant agreement, each license or franchise grantee shall pay an annual license fee to the Village equal to one thousand five hundred dollars (\$1,500.00) as reimbursement for the Village's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users. (Ord. 1-97, 2-4-1997)~~

#### **12-7-19: SECURITY FUND:**

Each grantee of a license or franchise agreement shall establish a permanent security fund with the Village by depositing the amount of fifty thousand dollars (\$50,000.00) ten percent of the actual construction cost as certified by the applicant's engineer and approved by the village engineer, with the Village in cash, an unconditional letter of credit, or other instrument acceptable to the Village, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways of the Village. Each grantee of a permit shall establish a permanent security fund with the Village by depositing the amount of five percent of the actual

construction cost as certified by the applicant's engineer and approved by the village engineer, which shall be subject to the same terms as set forth herein.

A. The fund shall serve as security for the full and complete performance of this Title, including any costs, expenses, damages or loss the Village pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the Village.

B. Before any sums are withdrawn from the security fund, the Village shall give written notice to the grantee:

1. Describing the act, default or failure to be remedied, or the damages costs or expenses which the Village has incurred by reason of grantee's act or default;
2. Providing a reasonable opportunity for grantee to first remedy the existing or ongoing default or failure, if applicable;
3. Providing a reasonable opportunity for grantee to pay any monies due the Village before the Village withdraws the amount thereof from the security fund, if applicable;
4. That the grantee will be given an opportunity to review the act, default or failure described in the notice with the Village Manager or his designee.

C. Grantees shall replenish the security fund within fourteen (14) days after written notice from the Village that there is a deficiency in the amount of the fund.

**SECTION THREE:** That all Ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

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

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this 12th day of March, 2013.

APPROVED:

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Frank Soto, Village President

ATTEST:

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Susan Janowiak, Village Clerk

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

NAYES: \_\_\_\_\_

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

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**TYPE:** Resolution      **SUBMITTED BY:** Joe Caracci      **DATE:** 03/04/2013

**DESCRIPTION:** Resolution authorizing the execution of a License Agreement with Sidera Networks to install Telecommunications within the Village of Bensenville Right-of-Way

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

**ASSIGNED COMMITTEE:** I & E (unanimous approval)

**DATE:** 02/26/2013

**BACKGROUND:** Sidera Networks approached the Village of Bensenville with an application to install fiber optic ducts within the rights-of-way (ROW) of the village. The intent of the project is to ultimately complete a fiber optic run between I-90 and I-294. Obviously, the Village of Bensenville plays a very important and critical part in their business plans. The proposed project would include the directional drilling (and some open cut construction) of 22,213 linear feet of fiber optic cable along a path that runs from Busse Road (Rte. 83) and Foster Avenue to Marshall Road to Hillside Avenue to Mohawk Drive to Church Road to Jefferson Avenue to County Line Road to Grand Avenue. The scope would also include a minimum of 14 handholes through the corridor for access to the fiber. The estimated construction cost (from the design engineers) is approximately \$266,556.

The proposed project will not directly serve or benefit any residents or business owners of Bensenville. As such, Section 12-3-1 of our Village Code requires the telecommunications carrier to obtain a Telecommunications License.

**KEY ISSUES:** Based on our proposed Code changes to Title 12-3 (Telecommunications), the License agreement would include the following:

1. Application Fee - \$250
2. Annual Fee - \$22,213 for a ten (10) year term, renewable for additional terms in year eleven.
3. Permit Fee - \$7,997 (3% of engineers estimate of \$266,556)
4. Security Fund - \$26,656 (10% of the engineers estimate of \$266,556)

All other components of the Telecommunications Code will be required by Sidera and enforced accordingly.

Sidera is very interested in moving forward with construction as soon as possible.

*The Village attorney and Sidera are working feverishly to generate the license agreement that satisfies the needs and desires of both parties. We anticipate a document ready for approval by the March 12 Village Board Meeting*

**ALTERNATIVES:** Village Board / Committee discretion

**RECOMMENDATION:** Approval of the proposed resolution.

**BUDGET IMPACT:** This Agreement will generate annual revenue that can be set aside for ROW maintenance.

**ACTION REQUIRED:** Approval of Resolution approving the execution of a License Agreement with Sidera Networks, LLC Pursuant to Title 12 – Telecommunications of the Bensenville Village Code

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE VILLAGE OF BENSENVILLE  
APPROVING EXECUTION OF A LICENSE AGREEMENT  
WITH SIDERA NETWORKS, LLC  
PURSUANT TO TITLE 12 – TELECOMMUNICATIONS  
OF THE BENSENVILLE VILLAGE CODE**

**WHEREAS**, the Village of Bensenville (hereinafter the “Village”) is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the Village has previously adopted regulatory provisions for telecommunications providers seeking to operate in the Village, which are contained in Title 12-Telecommunications, of the Village of Bensenville Code of Ordinances; and

**WHEREAS**, Chapter 3 of Title 12 requires that a telecommunications license is required of any telecommunications carrier which desires to work in specific public ways of the Village for the singular purpose of providing telecommunications services solely to persons or areas outside the Village; and

**WHEREAS**, Sidera Networks, LLC, a New York Limited Liability Company, has approached the Village relative to its request to install, construct and maintain a fiber optic telecommunications network within the Village’s public rights of way to serve its clients who are presently not located in the Village; and

**WHEREAS**, pursuant to Title 12, Chapter 10 – Construction of Utility Facilities in the Rights of Way, Sidera Networks, LLC has tendered an application for approval of its request to construct and maintain its facilities in designated areas of the public rights of way; and

**WHEREAS**, the Director of Public Works has reviewed the application and found that it conforms to the requirements of Title 12, Chapter 8, and applicable ordinances, codes, laws, rules and regulations of the Village; and

**WHEREAS**, because Sidera Networks, LLC intends to serve clients who are not located within the Village, Title 12 requires the Village to consider a License Agreement in the event the application for use of the Village's public ways meets the conditions set forth in Title 12; and

**WHEREAS**, Sidera Networks, LLC has requested that the Village enter into a non-exclusive License Agreement with Sidera Networks, LLC which will allow it to install and maintain its fiber optic telecommunications network within the Village's public right of ways; and

**WHEREAS**, the terms of such License have been discussed, and the parties hereto agree that the terms and conditions are those set forth in the License Agreement, attached hereto and incorporated herein by reference as Exhibit "1;" and

**WHEREAS**, Title 12 requires the Corporate Authorities to make certain determinations in the grant of such License, which the Corporate Authorities have considered and are prepared to make, believing the License to Sidera Networks, LLC to be in the best interests of the Village and the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

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

**SECTION TWO:** Based on the recommendation of staff and its review of the application filed, the following determinations are herein made:

- A. Sidera Networks, LLC exhibits the financial and technical ability to perform the work;
- B. There is no legal impediment to the performance of the work by Sidera Networks, LLC.
- C. The public ways have the capacity to accommodate the proposed facilities.
- D. The public ways have the capacity to accommodate additional utility and telecommunications facilities if a License is granted to Sidera Networks, LLC.
- E. There shall be no damage or disruption, of public or private facilities, improvements, service, travel or landscaping if the License is granted, and should any occur, remediation measures are set forth in the License Agreement.
- F. Consideration has been given to the public interest in minimizing the cost and disruption of construction within the public ways and such has been considered as part of the License Agreement.
- G. While the fiber optic network which Sidera Networks, LLC seeks to construct will not provide a service to the community, it will provide a service to clients within the region; and, further, in exchange for the grant of a License for its work, Sidera Networks, LLC will construct and install the Village of Bensenville Fiber Optic Network.
- H. There shall be no negative effect on public health, safety and welfare if the License is granted.

I. The routes and locations of the proposed facilities can be reasonably accommodated within the route requested by Sidera Networks, LLC, and said route best serves its clients.

J. Consideration has been given to applicable Federal and State telecommunications laws, regulations and policies and there is nothing to prevent the grant of this non-exclusive License.

K. The grant to use the public ways will serve the community interest in that Sidera Networks, LLC will compensate the Village for construction of its facilities within the public right of way.

**SECTION THREE:** Based on the finds set forth herein, as well as consideration of the terms set forth in the License Agreement, the Corporate Authorities hereby authorize the President to execute the License Agreement in the form attached hereto as Exhibit 1, except as may be modified by staff in respects which do not constitute major changes to the terms set forth therein, and that the Village Clerk is authorized to attest to the President's execution thereof.

**SECTION FOUR:** The Village Clerk shall mail a copy of this Resolution and the Executed License Agreement to Sidera Networks, LLC, to the address provided within the License Agreement.

**SECTION FIVE:** This Resolution shall be in full force and effect upon its passage and approval as required by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this 12th day of March, 2013.

APPROVED:

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

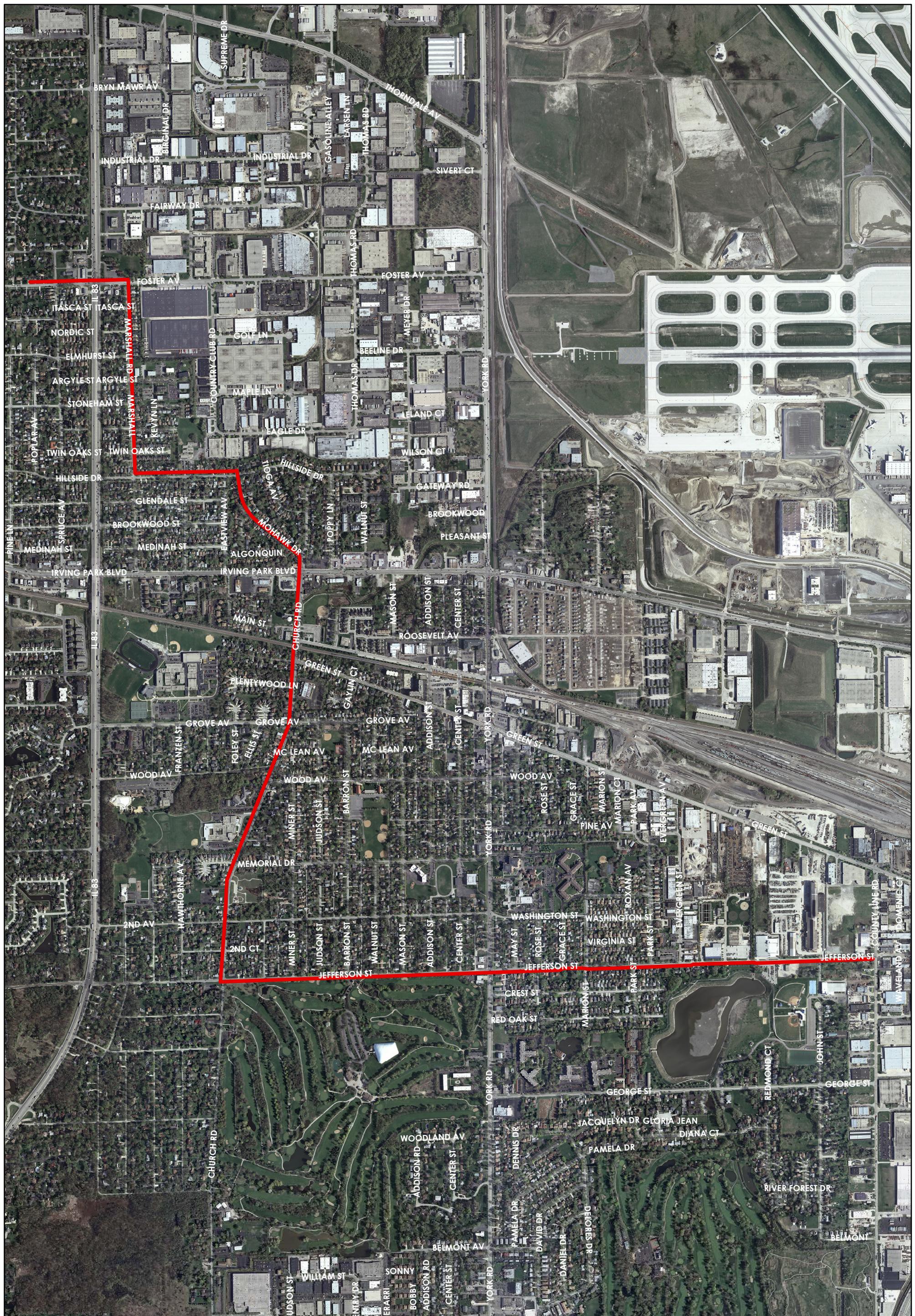
ABSENT:\_\_\_\_\_

f:\pkb\bensenville\resolutions\sidera.license.doc

# Village of Bensenville

Proposed Fiber Optic Cable Route

— FOC Route



(Reserved For Recorder's Use Only)

## **VILLAGE OF BENSENVILLE/ SIDERA NETWORKS, LLC LICENSE AGREEMENT**

This License Agreement (the "License Agreement") is entered into this 12th day of March, 2013, by and between the Village of Bensenville, an Illinois municipal corporation, 12 S. Center Street, Bensenville, Illinois 60106 ("Licensor") and Sidera Networks, LLC, a New York Limited Liability Company ("Licensee") (collectively, the "Parties").

### **RECITALS**

A. Licensee is a provider of tailored, high capacity communication services, and in this capacity, Licensee desires to install, construct, locate, operate, and maintain telecommunication facilities (hereinafter, the "Facilities"), specifically, a fiber optic network in the Licensor's highway right of way as designated in Exhibit "A" (the "Licensed Premises") so that Licensee, may provide communications services to its customers outside of the Village.

B. The Licensor is empowered to provide such approval pursuant to the Village of Bensenville Municipal Code, Section 12, Chapter 3, which provides for issuance of a Telecommunications License to a telecommunications carrier who desires to work in the public ways in the Village for the singular purpose of providing telecommunications services solely to persons or areas outside the Village.

C. The Licensee has submitted the application required by Section 12-3-2, and upon review the Corporate Authorities of the Licensor have made the determination required by Section 12-3-3 that the grant of the application will serve the interests of the Village and its residents.

D. The Licensor, therefore, has agreed to allow Licensee to construct, locate, operate and maintain its Facilities in the Licensed Premises subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, for and in consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. The foregoing Recitals are incorporated as if fully set forth herein.

2. Subject to the terms and conditions of this License Agreement, Licensor hereby grants Licensee, a non-exclusive license for use of the Licensed Premises for the purpose of installing, constructing, locating, operating, and maintaining its Facilities within the Licensor's highway rights of way, as designated in Exhibit "A" in accordance with the installation plans therefore as dated \_\_\_\_\_, and maintained by the Public Works Department. Except as may be varied by the installation plans, the Licensee shall construct and install all Facilities in accordance with Section 12-3-9.

Licensor also grants Licensee a non-exclusive license for ingress and egress to the Licensed Premises, for the purpose of installing and maintaining the Facilities. Licensee shall be solely responsible for securing the necessary permits for said installation from any federal, state or local agencies (including

any permits from railways) and shall be solely responsible for the costs of same. Licensee shall also apply and be solely responsible for paying for and securing the necessary permit(s) to perform the work contemplated hereunder, including any related to excavations or construction.

Licensee agrees to provide the Village Manager of the Lessor ("Village Manager") or his designee, seventy-two (72) hours' notice prior to commencing any work under this License Agreement. In the event that emergency repairs are necessary for the Facilities, Licensee shall immediately notify the Village Manager, in writing, of the need for such repairs. Licensee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency.

3. Term. The term of this License Agreement (the "Term") shall be ten (10) years, commencing March 12, 2013 and terminating at midnight on the 11th day of March, 2023.

4. Registration with Village. Pursuant to Title 12, Sections 12-1-3 and 12-2-1 *et seq.*, the Licensee shall register with the Village, and pay the fee as then required by Ordinance.

5. Fees/Costs.

A. License Application and Review. Pursuant to Title 12, Chapter 6, Section 12-6-2, the Licensee shall pay a fee of Two Hundred Fifty and 00/100 dollars (\$250.00).

B. Village Costs. Pursuant to Title 12, Chapter 6, Section 12-6-3, the Licensee shall, within thirty (30) days of written demand therefore, reimburse the Village for all direct and indirect costs and expenses incurred by the Village in connection with any modification, amendment, renewal or transfer of the License.

C. Construction Permit Fee. Pursuant to Title 12, Chapter 6, Section 12-6-6, prior to issuance of a construction permit, the Licensee shall pay a permit fee to the Village in the amount of Seven Thousand Nine Hundred Ninety-Seven and 00/100 (\$7,997.00). Said permit fee shall be payable to the Public Works Department.

E. Fee for Use of Village Property. Pursuant to Title 12, Chapter 6, Section 12-6-5, the Licensee shall pay the annual sum of Twenty-Two Thousand, Two Hundred Thirteen and 00/100 Dollars (\$22,213.00), as and for the reasonable compensation for use of the Village's property.

All payments required hereunder, except as separately set forth herein, shall be made payable to the Village of Bensenville, c/o Finance Director, Bensenville Village Hall, 12 S. Center Street, Bensenville, IL 60106.

6. Taxes. Licensee acknowledges that the Licensed Premises is exempt from property taxes, and that to the extent the County Assessor or State Department of Revenue, or any other authority with the power to do so, would attempt to assess any license or property tax as a result of the use authorized by this License Agreement, Licensee will assist Lessor in defending against any such action and in the event the Licensed Use results in a tax bill of any kind, Licensee will be solely responsible to pay any such tax as is finally determined. Failure to pay said taxes by the date they are due shall constitute a material breach of this License.

7. Conditions of Grant of License. The Parties hereto agree that this License is subject to Title 12, Chapter 7, except as may be varied by written agreement of the Public Works Director and Licensee. Additionally, Licensee shall provide written notice to residents who may be affected by installation of the Facilities.

8. Construction Standards. The Parties hereto agree that the work to be undertaken as approved by this License is subject to the construction standards set forth in Title 12, Chapter 8, except as may be varied by written agreement of the Public Works Director and Licensee.

9. No Lease. The Parties agree that this License Agreement confers upon the Licensee only a license and non-exclusive right to use the Licensed Premises upon the terms set forth herein, and that nothing contained herein is intended to confer upon the Licensee a leasehold interest, or any other right, title or interest in the Licensed Premises or any portion thereof. In the event of default by the Licensee, the Lessor shall not be obligated to bring a forcible entry and detainer action to terminate Licensee's rights hereunder, said rights to be terminated upon default, as defined hereinbelow.

10. Default/Event of Litigation. In the event of the failure of any Party to perform any or all of its duties and obligations under the terms and conditions of this License Agreement, including payment of the license fees and the costs hereunder, the other party shall notify the defaulting party of such default in writing, and the defaulting party shall have thirty (30) days from receipt of such notice to cure the default. In the event said default is not cured within said cure period, or in the event of repeated defaults, the non-defaulting party shall be entitled to all remedies available at law and/or equity to enforce its rights under this License Agreement. In the event of default by Licensee, which is not cured, the Lessor shall have the right to terminate service which may be provided through the Facility in any way reasonably available to it.

11. General Insurance Provisions.

A. Evidence of Insurance - Licensee shall procure, maintain and keep in effect throughout the Term a policy or policies of comprehensive general liability insurance with limits of not less than:

1. \$5,000,000.00 for bodily injury or death to each person;
2. \$5,000,000.00 for property damage resulting from any one accident; and
3. \$5,000,000.00 for all other types of liability.
4. \$3,000,000.00 for automobile liability for owner, non-owned and hired vehicles, with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.
5. Workers' compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
6. Comprehensive for premises-operations, explosions and collapse hazard, underground hazard and products compete hazard, with limits of not less than \$3,000,000.00.

The liability insurance policies required herein shall be maintained by the Licensee throughout the term of this Agreement, and for such other period of time during which the Licensee is in operation without a License hereunder, or is engaged in the removal of its Facilities. Prior to the commencement of the Term, Licensee agrees to cause Certificates of Insurance to be amended to reflect that it is the insured, and that the Lessor and the Lessor's officers, members and employees are each primary, non-contributory additional insureds on said policy, but for the acts and omissions of Lessor and for whom Lessor is responsible.

B. Prior to the commencement of any work related to the Facilities in the Village of Bensenville, the Licensee shall furnish the Lessor with the above described Certificate of Insurance, and applicable policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

C. Failure of the Lessor to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of any insurance obligations herein.

D. The Licensor shall have the right, but not the obligation, of prohibiting the Licensee from using or occupying the Licensed Premises until such Certificates of Insurance are received by the Licensor.

E. All Certificates of Insurance required herein shall also state that no cancellation of the insurance shall become effective until the expiration of thirty (30) days written notice thereof shall have been given by the insurance company to the Licensor via first class mail.

F. All coverages required herein shall be primary insurance as respect the Licensor. Any insurance or self-insurance maintained by the Licensor, its officials, officers, employees, volunteers and agents shall be in excess of insurance maintained by the Licensee, and shall not contribute with said coverages/insurance.

G. The Licensee agrees that all policies and/or coverages required by its contractors shall contain a "contractual liability" clause.

H. Acceptability of Insurers - The Licensee shall require its contractors to be insured by insurance companies which obtain a rating from A.M. Best, that rating should be no less than A- VII using the most recent edition of the A.M. Best's Key Rating Guide. All insurance required herein shall be placed with insurers licensed to do business in the State of Illinois and licensed by the Illinois Department of Insurance.

12. Renewal of License and Abandonment of Facilities. The plan and manner of execution or operation shall meet the approval of and be done to the satisfaction of the Village Manager or his authorized representative. Any and all of the Facilities shall be maintained by the Licensee at its sole expense. The Licensee may request that the Corporate Authorities renew this License by application made ninety (90) days prior to its expiration. If the Licensee elects not to renew the License or it is denied, then the Village Manager shall serve a one hundred twenty (120) day written notice to the last known address of the Licensee to remove or relocate the Facilities. If the Licensee wishes to abandon use of any part of the Facilities under or pursuant to the License, or upon cancellation, revocation or termination of the privilege herein granted, Licensee shall notify Licensor and may, subject to Licensor's approval, which shall not be unreasonably withheld, permanently abandon the Facilities in place.

13. Protection of Vegetation. No trees, or shrubs shall be cut, trimmed or removed nor shall any building or utilities of the Licensor be disturbed without the written permission of the Village Manager or his authorized representative, whose permission shall not be unreasonable withheld, conditioned or delayed.

14. Liability of the Licensor. It is further understood and agreed that the Licensor shall not be liable for any damages or injury to any person or property arising from, growing out of, or incident to the construction, operation, or maintenance of the Facilities for which the License is issued, except if such damages or injury are the result of Licensor's own intentional misconduct or negligence.

15. Indemnification. To the fullest extent permitted by law, the Licensee shall indemnify and hold harmless the Licensor and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (reasonable attorney and paralegal fees and court costs), arising from or in any way connected with (i) any act, omission, wrongful act or negligence of the Licensee or any of its officers, agents, employees, volunteers, contractors, subcontractors, vendors, or of anyone acting on behalf of the Licensee; and, (ii) any accident, injury, death, or damage whatsoever occurring, growing out of incident to, or resulting directly or indirectly from the Licensee's use of the Licensed Premises. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Licensee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses, or expenses arising out of or resulting from the negligence, misconduct or breach of this section by the Licensor, its officials, officers, employees, agents,

or representatives. In no event shall either Party be entitled to damages for lost profits, lost opportunity or lost income arising from either Party's performance under this License.

This License Agreement is entered into for the sole benefit of the Parties hereto, and nothing in this License Agreement shall be construed as either expressly or indirectly extending, establishing, or acknowledging any rights or obligations in favor of third persons who are not signatures or beneficiaries to this License Agreement.

16. Supervision. The Licensee assumes and exercises full responsibility for the supervision of its employees, contractors, sub-contractors, suppliers, vendors, and agents during the term of this License Agreement. This paragraph is inserted solely for the benefit of the contracting Parties, and is not intended to establish, impose or acknowledge any duty to supervise as to third parties.

17. Notice. All notices required shall be in writing and shall be given in the following manner:

- A. By personal delivery of such notice; or
- B. By mailing of such notice to the addresses recited herein by certified mail, postage pre-paid, return receipt requested. Except as otherwise provided herein, notice served by certified mail, shall be effective on the date of mailing; or
- C. By sending facsimile transmission. Notice shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 A.M. to 4:30 P.M. Chicago time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission; or
- D. By depositing such notice with a nationally recognized overnight courier. Notice shall be effective upon being deposited with the overnight courier.

Any party shall have the right to designate any other address for notice purposes by written notice to the other party or his attorney in the manner aforesaid. The addresses of the parties are as follows:

If to Licensee:

Sidera Networks, LLC  
196 Van Buren Street, Suite 250  
Herndon, VA 20170  
FAX: (703) 434-8534

If to Lessor:

Village Manager  
Village of Bensenville  
12 S. Center Street  
Bensenville, Illinois 60106  
FAX: (630) 594-1105

With a required copy to:

Legal Department  
196 Van Buren Street, Suite 250  
Herndon, VA 20170  
FAX: (703) 434-8534

With a required copy to:

Mary E. Dickson  
Bond, Dickson & Associates, P.C.  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187  
FAX: (630) 681-1020

18. Prohibited Uses and Activities. The Licensee agrees to keep the Licensed Premises in a clean, safe, and sanitary condition. The Licensee further agrees that it shall abide by any and all applicable laws, ordinances, statutes and regulations of the Village of Bensenville, County of DuPage, the State of Illinois and the United States of America and enforcement and regulatory agencies thereof, which

regulate or control the Licensee's use of the Licensed Premises.

19. Licensed Premises Disclaimer. The Licensee expressly acknowledges that the Licensor has made no representations or warranties, express or implied, as to the adequacy, fitness or condition of the Licensed Premises for the purposes set forth herein, or for any other purpose or use, express or implied, by the Licensee. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY AND HABITABILITY ARE HEREBY EXCLUDED. The Licensee accepts use of the Licensed Premises and any improvements thereon in "AS-IS" condition and "WITH ALL FAULTS". The Licensee acknowledges that it has inspected the Subject Property and Licensed Premises and has satisfied itself as to the adequacy, fitness and condition thereof.

Further, the Licensee agrees it is solely responsible for obtaining JULIE information regarding the existing location of all underground facilities in the Licensed Premises, and to construct its Facilities in accordance therewith.

20. Miscellaneous.

A. The Parties agree that no change or modification to this License Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by the Parties, and attached to and made a part of this License Agreement.

B. The Parties agree that the titles of the items of this License Agreement, hereinabove set forth, are for convenience of identification only and shall not be considered for any other purpose.

C. The Parties agree that if any provision of this License Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.

D. This License Agreement shall be construed, governed, and enforced according to the laws of the State of Illinois and any action to enforce this License Agreement must be brought in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois. In the event litigation must commence to enforce a Party's rights hereunder, including any action for declaratory judgment, the prevailing party in any such litigation shall be entitled to recover its costs in bringing such suit, including its reasonable attorney's fees.

**REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK**

LICENSEE:  
SIDERA NETWORKS, LLC

LICENSOR:  
VILLAGE OF BENSENVILLE

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
Frank Soto, President  
Village of Bensenville

Printed Name: \_\_\_\_\_ Attest:

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

By: \_\_\_\_\_  
Susan Janowiak, Village Clerk  
Village of Bensenville

**From:** [Marino D. Fernandez](#)  
**To:** [Joseph Caracci](#)  
**Cc:** [Reece Conrad](#)  
**Subject:** Sidera Networks Application.  
**Date:** Thursday, August 23, 2012 8:49:33 AM  
**Attachments:** [2012-070-002 Bensenville, IL Rake off sheet.pdf](#)

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Joe,

Attached is the "Summary Sheet" for the are to be permitted by the Village of Bensenville. The total footage is 22, 213 feet. The engineered construction cost is \$266,556.

Just information purposes, as stated by Greg, for the adding of an additional conduit, the same equipment is utilized, however, the operation of pulling the pipes is slower since you run the chance of breaking and loosing at least one of the conduits during the operation.

Please let us know if you need any additional information.

**TELECOM ENGINEERING SERVICES, INC.**

**Marino D. Fernandez, P.E. - RCDD**

President

220 South Halsted Street, Suite 300  
Chicago, Illinois 60661-5454  
Main: 312-612-5216  
Fax: 312-612-5219  
e-mail: [mfernandez@telecom-eng.com](mailto:mfernandez@telecom-eng.com)



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. Warning: Although the company has taken reasonable precautions to ensure no viruses are present in this email, the company cannot accept responsibility for any loss or damage arising from the use of this email or attachments.

Telecom Engineering Services, Inc. - 220 S Halsted St, Chicago, IL 60661-5454 - TESD001 - Year 2012

**TYPE:** Resolution **SUBMITTED BY:** Joe Caracci **DATE:** 03/04/2013

**DESCRIPTION:** Resolution Authorizing Approval of Change Order No. 4 for the Northern Business District Reconstruction Project which results in a deduction of \$823,545.80 for a final Phase I construction cost of \$10,703,163.96

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/>	<i>Vibrant Major Corridors</i>

**ASSIGNED COMMITTEE: I&E (unanimous approval)**

**DATE: 02/26/2013**

**BACKGROUND:** The Northern Business District Reconstruction (NBDRP) Project has been under construction since the beginning of June 2011. After a long 2011 construction season, some of the work items on the project were carried over into the 2012 construction season. Substantial completion of the project was achieved in early summer of 2012. Final punchlist work was completed in fall of 2012. Staff has been working to finalizing the quantities for the Phase I work on this project which consists of items associated with SSA3-8. We have finally agreed on quantities with the Joint Venture.

The award of the construction contract to the Joint Venture of A-Lamp Concrete Construction / John Neri Construction and project funding for the work were established at the May 24, 2011 Village Board Meeting. At the time of bid award, the Village Board authorized the appropriation of \$10,774,180 of monies. Change Order No. 1 was approved on October 11, 2011 in the amount of \$128,068, increasing the appropriation to \$10,902,248. Change Order No. 2 was approved on November 22, 2011 in the amount of \$493,500, increasing the appropriation to \$11,395,747. Change Order No. 3 was approved on February 28, 2012 in the amount of \$130,964, increasing the appropriation to \$11,526,711.

**KEY ISSUES:** Change Order No. 4 results in a net decrease of (\$823,545.80) which results in a modified contract amount of \$10,703,163.96 – which is \$71,015.73 below the awarded amount for this phase (a 0.7% decrease in the contract, inclusive of all four change orders). This change order completes all items in Phase I (SSA 3-8) on the project. A summary of the change order with respect to each SSA can be seen in the table below:

	SSA 3	SSA 4	SSA 5	SSA 6	SSA 7	SSA 8	Non-TIF
Original Bid \$	\$1,175,168.20	\$4,510,915.20	\$229,615.36	\$2,230,726.99	\$1,190,134.37	\$598,866.14	\$838,753.43
C.O. #1	\$8,312.00	(\$5,906.83)	\$1,031.23	\$10,018.50	\$28,784.78	\$2,689.59	\$83,137.83
C.O. #2	\$16,098.00	\$86,750.21	\$23,341.34	\$226,762.49	\$79,670.20	\$60,877.18	\$0
C.O. #3	\$0	\$46,695.43	\$1,709.18	\$16,604.79	\$4,797.89	\$4,457.76	\$56,698.51
C.O. #4	(\$181,184.05)	(\$534,404.85)	(\$3,021.26)	(\$29,351.75)	(\$46,406.46)	(\$7,879.84)	(\$21,297.60)
Modified \$	\$1,018,394.15	\$4,104,049.16	\$252,675.85	\$2,454,761.02	\$1,256,980.78	\$659,010.83	\$957,292.17
SSA Budget \$	\$1,102,166.68	\$4,757,603.16	\$332,711.97	\$3,232,518.22	\$1,661,053.21	\$867,796.68	

**ALTERNATIVES:** Discretion of the Village Board

**RECOMMENDATION:** Staff recommends approval of Change Order No. 4 resulting in a deduction of \$823,545.80.

**BUDGET IMPACT:** All 6 SSA ended below budget for construction.

**ACTION REQUIRED:** A motion to approve a Resolution authorizing the approval of Change Order No. 4 (FINAL – Phase I) to the Joint Venture of A-Lamp Concrete Contractors / John Neri Construction resulting in a deduction in the amount of \$823,545.80 for a revised contract cost of \$10,703,163.96 associated with the Northern Business District Reconstruction Project.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION CONCERNING THE DETERMINATION OF  
THE BENSENVILLE VILLAGE BOARD THAT CHANGE ORDER  
NUMBER FOUR (FINAL – PHASE I) WITH THE JOINT VENTURE OF A-LAMP  
CONCRETE CONTRACTORS / JOHN NERI CONSTRUCTION COMPANY  
RESULTING IN A DECREASE OF \$823,545.80 IS REQUIRED FOR THE  
NORTH BUSINESS DISTRICT RECONSTRUCTION PROJECT  
FOR A REVISED CONTRACT COST OF \$10,703,163.96**

WHEREAS, Chapter 720, Section 5/33-E-9 of the Illinois Compiled Statutes 2002 requires change orders on public contracts involving total cumulative changes of more than Ten Thousand Dollars (\$10,000) in value or a cumulative total of thirty (30) days in time to be made by written determination; and

WHEREAS, it has been determined that it would be beneficial to the Village to revise original contract quantities to match actual as-constructed amounts, to compensate the contractor for additional work performed as directed and approved by the project engineer and Village staff, and to deduct monies for various violations and Village costs;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BENSENVILLE, DUPAGE COUNTY, ILLINOIS, as follows:

**SECTION ONE:** The Corporate Authorities of the Village make the written determination that the circumstances necessitating the change were not within the contemplation of the contract as signed and that this change order is in the best interest of the Village.

**SECTION TWO:** The change order which this determination involves relates to the following contract: Northern Business District Reconstruction Project, Joint Venture of A-Lamp Concrete Contractors / John Neri Construction Company. The nature of Change Order Number Four (FINAL – Phase I) and the amount of change is as follows - To compensate the contractor for additional work items performed on Phase I (SSA3-8) of the Project . The above changes resulted in a net cost decrease of eight hundred twenty-three thousand five hundred forty-five dollars and eighty cents (\$823,545.80),

for a revised contract price of ten million seven hundred three thousand one hundred sixty-three dollars and ninety-six cents (\$10,703,163.96) with no extension in time.

SECTION THREE: This Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, \_\_\_\_\_, 2013.

APPROVED:

---

Frank Soto  
Village President

ATTEST:

---

Susan Janowiak  
Village Clerk

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

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

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



# Village of Bensenville

## Department of Public Works

717 E. Jefferson Street  
Bensenville, IL 60106  
Phone (630) 350-3435 Fax (630) 594-1148

Date: February 15, 2013  
To: Mike Cassady, Village Manager  
From: Joe Caracci, Director of Public Works  
Subject: Change Order No. 4 – NBDRP

---

The **North Business District Reconstruction Project (NBDRP)** combines SSA and TIF funds to support the storm sewer, water main, sanitary sewer, and street improvements for six SSA areas within the Northern Business District.

Enclosed herewith is the change order form and Resolution in support of Change Order No. 4 for the NBDRP. The change order consists of a decrease in the contract total to the Joint Venture of A-Lamp Concrete Contractors / John Neri Construction in the amount of **\$823,545.80** with no extension in time. This change order focuses on resolving all outstanding items as they relate to Phase I of this project (SSA 3-8).

The award of the construction contract to the Joint Venture of A-Lamp Concrete Construction / John Neri Construction and project funding for the work were established at the May 24, 2011 Village Board Meeting. At the time of bid award, the Village Board authorized the appropriation of \$10,774,180 of monies. Change Order No. 1 was approved on October 11, 2011 in the amount of \$128,068. Change Order No. 2 was approved on November 22, 2011 in the amount of \$493,500. Change Order No. 3 was approved on February 28, 2012 in the amount of \$130,964. Change Order No. 4 is requested resulting in a decrease in the amount of \$823,545.80. The modified contract total will be **\$10,703,163.96**. A table is attached summarizing the current status of the project funding with respect to individual SSA/TIF and Village accounts. The current change order results in a final cost for Phase I that is 0.7% under the contract value.

To best outline the items for inclusion in this change order, the body of this memo will mirror the Change Order Form attached. Each item on the form will be explained, in detail.

### **CHANGE ORDER NO. 4**

<b>A      ORIGINAL CONTRACT LINE ITEMS (INCREASE)</b>	<b>\$546,698.62</b>
The original contract quantities provide an estimated amount for the purposes of bidding and obtaining an idea of the total cost of a project. Changes to these quantities take place during project construction due to field conditions. Some pay items are used more than originally estimated and some less. This item shows the total cost for pay items that exceeded the estimated amount. When taking the overall contract line item increase (Item A) and subtracting the overall contract line item decrease (Item B) the net result is a deduction of (\$1,057,636.46) from the contract.	

**B ORIGINAL CONTRACT LINE ITEMS (DECREASE) -\$1,604,344.33**

The original contract quantities provide an estimated amount for the purposes of bidding and obtaining an idea of the total cost of a project. Changes to these quantities take place during project construction due to field conditions. Some pay items are used more than originally estimated and some less. This item shows the total cost for pay items used less than the original amount. When taking the overall contract line item increase (Item A) and subtracting the overall contract line item decrease (Item B) the net result is a deduction of (\$1,057,636.46) from the contract.

**C BALANCING PREVIOUS CHANGE ORDER QUANTITIES (INCREASE) \$78,307.18**

As need arises throughout the project, line items are added to the contract to provide for unforeseen work. These items are described in previous change orders. When items are added, an estimated quantity of the item is given. These items can be used more or less than the estimated quantity based on field conditions. This item shows the total cost for pay items that exceeded the estimated change order amount. When taking the increase in previous change order quantities (Item C) and subtracting the decrease in previous change order quantities (Item D) the net result is an addition of \$37,871.35 to the contract.

**D BALANCING PREVIOUS CHANGE ORDER QUANTITIES (DECREASE) -\$40,435.71**

As need arises throughout the project, line items are added to the contract to provide for unforeseen work. These items are described in previous change orders. When items are added, an estimated quantity of the item is given. These items can be used more or less than the estimated quantity based on field conditions. This item shows the total cost for pay items used less than the estimated change order amount. When taking the increase in previous change order quantities (Item C) and subtracting the decrease in previous change order quantities (Item D) the net result is an addition of \$37,871.35 to the contract.

**X9100002 MJ TAPPING SLEEVE & VALVE 12x12 \$9,135.00**

The proposed watermain on Thomas between Thorndale and Foster called for a connection to the Thorndale watermain. The connection at Thorndale would have resulted in a very large water outage for many businesses outside of the project limits as the watermain would have to be temporarily shut down. This item was added to install the connection to the Thorndale main under pressure in order to eliminate the need to shut off the water to area businesses.

**FRC08004 VALVE VAULT & VALVE VAULT REMOVAL \$1,612.00**

The existing watermain valve vault was removed at the Thomas and Thorndale intersection. At the time of the removal there was no line item for valve vault removal. Because there was no line item, the work was performed on a time and material basis. The cost listed is the actual cost to perform the work.

**FRC08014 SUPREME STORM SEWER ADJUSTMENT \$893.00**

The storm sewer tie-in elevation was modified and an additional structure was added to tie in an existing storm sewer lateral to the proposed storm sewer. The lateral work was at the northwest corner of the Supreme and Ellis intersection. This additional work was performed on a time and material basis.

<b>FRC08015</b>	<b>STORM SEWER MODIFICATION SUPREME</b>	<b>\$1,386.00</b>
Modifications were needed to the proposed storm sewer to tie in the existing parking lot drainage to the proposed storm sewer at the southeast corner of the bend on Supreme Drive at approximate station 613+00, right.		
<b>X9100035</b>	<b>FIRE HYDRANT AND VALVE EXT 30"</b>	<b>\$1,655.00</b>
This item was added to pay for hydrant extension work that was required above and beyond the original design installation. The necessary extension was utilized due to utility conflicts that required the hydrant service line to be buried at a deeper depth to avoid the conflict.		
<b>X9100037</b>	<b>FIRE HYDRANT AND VALVE EXT 12"</b>	<b>\$866.25</b>
This item was added to pay for hydrant extension work that was required above and beyond the original design installation. The necessary extension was utilized due to utility conflicts that required the hydrant service line to be buried at a deeper depth to avoid the conflict.		
<b>FRC08026</b>	<b>STREET LIGHT FAULT REPAIR, THOMAS DR</b>	<b>\$3,955.17</b>
There were some street light faults on the Village's existing street lights on Thomas. The repair area was between Foster to the south and the railroad tracks to the north. The Village wanted the project's street lighting contractor to perform the repair as a part of the project activities.		
<b>FRC08027</b>	<b>FENCE SIGHT SCREEN</b>	<b>\$594.87</b>
The sight screen was removed at 648 Thomas (Boat Specialists) to perform the necessary streambank modification work. The cost is to replace the sight screen that was removed with the existing fence.		
<b>FRC08028</b>	<b>CRANE REMOBILIZATION</b>	<b>\$7,403.66</b>
The streambank box culvert installation at approximate station 135+00 on Thomas could not be completed due to the existing utility conflicts. The additional cost was to reinstall the ditch bypass and a portion of the cost of having the crane return to the site after the utility conflicts were corrected.		
<b>FRC08029</b>	<b>GABION STONE BACKFILL 1001 INDUSTRIAL</b>	<b>\$1,042.13</b>
Additional stone backfill was placed between the parking lot, the fence and the new streambank gabion baskets at 1001 Industrial (Bill Casey Electric). The additional stone was necessary due to streambank widening in the area and the runoff from the asphalt parking lot at Bill Casey Electric.		
<b>FRC08030</b>	<b>GABION STONE BACKFILL FAIRWAY, INDUSTRIAL, THOMAS</b>	<b>\$3,612.13</b>
Additional stone backfill was placed between the parking lot and the new streambank gabion baskets. The additional stone was necessary due to the streambank widening in these locations and the runoff from the asphalt parking lots at 1001 Industrial, 648 Thomas and 793 Fairway.		
<b>FRC08031</b>	<b>EXCAVATE AND RELOCATE UTILITY FOR GABIONS</b>	<b>\$1,867.19</b>
An existing AT&T phone line was in conflict with the streambank gabion basket installation. The conflict was on the north side of the streambank just west of Birginal Street. The utility line was hand dug and relocated directly behind the gabion baskets.		

**FRC08032 REMOVE CONCRETE APRON FOR STREAMBANK GRADING \$562.74**

A portion of the existing concrete apron was removed at the 849-853 Fairway building. The apron was removed to allow grading from the apron down to the gabion baskets. Had the property owner not approved the apron removal, a more costly retaining wall would have been required.

**FRC08033 HMA SURFACE REMOVAL MARK/83 \$3,248.99**

The original plans for the Mark Street improvements showed project limits starting at the end of the radius return in the intersection of Mark and Route 83. Those limits resulted in approximately 60 feet of roadway pavement not being repaved as a part of the project. It was determined to extend the limits to Route 83. This item covers the work required to remove the existing asphalt in the extended limits area.

**FRC08034 INSTALLATION OF HMA AT MARK/83 \$12,490.30**

The original plans for the Mark Street improvements showed project limits starting at the end of the radius return in the intersection of Mark and Route 83. Those limits resulted in approximately 60 feet of roadway pavement not being repaved as a part of the project. It was determined to extend the limits to Route 83. This item covers the work required to place HMA pavement in the extended limits area.

**FRC08039 ELECTRIC INSTALLATION FOR TEMP LIGHTING \$1,018.87**

New conduit and wiring was installed on the west side of Supreme between Thorndale and the Supreme bend. A temporary lighting connection was performed at the Supreme bend to power the lights on Supreme between the Supreme bend and Thomas. This additional work allowed all roadway lighting to be operational during construction of the Supreme roadway resulting in better overall roadway safety.

**FRC08040 INSTALLATION OF SANITARY BYPASS \$10,880.49**

A sanitary bypass manhole was installed just south of the lift station on Supreme. The bypass manhole was installed in the Supreme right-of-way. The bypass manhole was scheduled to be installed at a later date. Due to the parkway grading that was occurring as a part of the project, it was decided to complete the installation of the bypass manhole prior to the completion of grading and sod placement.

**FRC08041 LOCATE AND ADJUST BURIED SANITARY MANHOLES \$5,591.59**

During the sanitary sewer televising some buried sanitary manholes were identified. This item was added to cover the costs of exposing the buried manholes, raising them to grade and installing new manhole frames for access.

**X9100038 EPOXY PAVT MARKING LETTERS & SYMBOLS \$251.16**

The original contract called for two bids for the roadway paving work. The alternate concrete paving bid was selected. The pavement markings specified in the original contract are utilized on asphalt surfaces only. The epoxy pavement marking is utilized on concrete pavement and was added to the contract due to the selection of the alternate concrete paving bid.

**X9100039 EPOXY PAVT MARKING LINE 4 \$1,833.26**

The original contract called for two bids for the roadway paving work. The alternate concrete paving bid was selected. The pavement markings specified in the original contract are utilized on asphalt surfaces

only. The epoxy pavement marking is utilized on concrete pavement and was added to the contract due to the selection of the alternate concrete paving bid.

**X9100040 EPOXY PAVT MARKING LINE 6 \$209.68**

The original contract called for two bids for the roadway paving work. The alternate concrete paving bid was selected. The pavement markings specified in the original contract are utilized on asphalt surfaces only. The epoxy pavement marking is utilized on concrete pavement and was added to the contract due to the selection of the alternate concrete paving bid.

**X9100041 EPOXY PAVT MARKING LINE 12 \$112.13**

The original contract called for two bids for the roadway paving work. The alternate concrete paving bid was selected. The pavement markings specified in the original contract are utilized on asphalt surfaces only. The epoxy pavement marking is utilized on concrete pavement and was added to the contract due to the selection of the alternate concrete paving bid.

**X9100042 EPOXY PAVT MARKING LINE 24 \$1,144.02**

The original contract called for two bids for the roadway paving work. The alternate concrete paving bid was selected. The pavement markings specified in the original contract are utilized on asphalt surfaces only. The epoxy pavement marking is utilized on concrete pavement and was added to the contract due to the selection of the alternate concrete paving bid.

**X9100043 CLEAN AND VIDEO SANITARY TRUSS PIPE SSA3 \$1,143.45**

The sanitary sewer mains on Mark and Tower were scheduled to be cleaned, televised and lined. Some locations were found to be truss pipe in good condition. Truss pipe is normally not lined. This item was added to compensate the lining contractor for cleaning and televising the sanitary sewer when no lining work was performed. The cleaning and televising is normally incidental to the lining work.

**X9100044 CLEAN AND VIDEO SANITARY TRUSS PIPE SSA4 \$9,504.79**

The sanitary sewer mains on Supreme and Ellis were scheduled to be cleaned, televised and lined. Some locations were found to be truss pipe in good condition. Truss pipe is normally not lined. This item was added to compensate the lining contractor for cleaning and televising the sanitary sewer when no lining work was performed. The cleaning and televising is normally incidental to the lining work.

**FRC08042 REMOVE AND REPLACE EXISTING FIRE HYDRANT \$7,715.97**

An existing leaking hydrant was removed and replaced at 222 Bryn Mawr. The cost for the work performed is a little escalated due to the fact that the watermain shutdown required to replace the hydrant needed to be done on a Saturday resulting in premium time being paid to all the workers. This work needed to be done on a Saturday due to the large office complex that would be impacted by the shutdown. The office complex is occupied Monday through Friday.

**FRC08043 TIE IN WATERMAIN TO EXISTING ON THOMAS \$12,061.72**

New watermain was installed on Thomas and capped south of the railroad tracks. The watermain is supposed to continue on Thomas southward from that location through the Thomas and Foster intersection. Due to the pending lawsuit in SSA #9, that work was halted. This item covers the

additional work necessary to connect the new watermain to the existing watermain south of the railroad tracks. This will keep the watermain looped together until the lawsuit is cleared and watermain installation can resume.

**FRC08044 STREET LIGHTING HANDHOLE \$2,215.30**

The street lighting conduit on Supreme goes from the north side of the roadway to the south side of the roadway just east of Ellis. A handhole was added to aid in the wire pulling. It also added a splice location due to the change in direction.

**FRC08045 STAND CONCRETE LIGHTPOLE SUPREME \$805.18**

An existing light pole was hit multiple times on Supreme at approximate station 629+50, right. Due to the installation of new conduit and wiring, the new pole location was moved east, away from the driveway entrance. The village furnished the new pole materials. This item is to cover the cost of installing the light pole in the new location.

**FRC08046 CLEAR STREET LIGHT KNOCKDOWN \$497.27**

During project operations, the existing street light pole was hit at the northwest corner of the Tower and Route 83 intersection. The electrical contractor was called out to remove the pole and secure the exposed live electrical wires due to safety concerns.

**FRC08047 STAND CONCRETE LIGHTPOLE TOWER \$394.06**

During project operations, the existing street light pole was hit at the northwest corner of the Tower and Route 83 intersection. After all project work was completed on Tower, the village furnished a new light pole to be installed at that location. This item was added to cover the labor costs in installing the pole onto the existing base and re-wiring the light pole.

**FRC08048 CLEANING OF EXISTING BOX CULVERTS \$19,723.00**

After all of the streambank modifications were completed, it was noted that the existing box culverts that were not replaced as a part of the project work still retained garbage, tree limbs and silt that restricted the overall streambank flow. The existing box culverts at Bryn Mawr, Birginal and Fairview were cleaned out by hand utilizing shovels and wheelbarrows.

**FRC08049 CLEANING OF THOMAS BOX CULVERT \$4,066.38**

The new box culvert on Thomas acquired a lot of debris as a result of the heavy rain event on July 23, 2011. The Village agreed to split the cost of the culvert cleaning with the underground contractor due to the event which was of no fault of the Village or the underground contractor.

**FRC08051 STONE FILL AT 1001 INDUSTRIAL \$1,279.01**

Some additional stone was added between the parking lot and the streambank gabion baskets at 1001 Industrial (Bill Casey Electric). Stone was placed at this location previously but settlement occurred over the winter and spring and more stone needed to be added.

**X9100045 SANITARY SEWER REPLACEMENT PVC 12 \$774.00**

A section of 12" sanitary sewer was replaced during the installation of the watermain pressure connection at the Thomas and Thorndale intersection. At the time of the sanitary work there was no

line item in the contract to cover this work. This item pays for the work performed at that location and time.

X9100046 ADJUST SANITARY SEWER 10 DIP \$8,332.50

A 10" sanitary sewer main was replaced with 10" ductile iron pipe and the grade was revised to avoid a conflict with the proposed storm sewer at that location. The location of the revised sanitary crossing is on Supreme at approximate station 618+25, just east of Ellis. The original contract line items did not have any provisions of this nature to pay for or correct the conflict.

X9100047 STORM SEWER REMOVAL 30 \$2,175.00

There were original line items in the contract to compensate the contractor for storm sewer removal of specific sizes. There was not a removal item for this size of pipe. This payment compensates the contractor for 150 linear feet of removal at three different locations.

X9100048 STORM SEWER REPLACEMENT RCP 21 \$2,105.20

The existing storm line at the Supreme bend was to be replaced in accordance with the contract plans. The existing storm line was called out to be replaced with a 12" storm sewer when the existing line was actually 21". The existing line was replaced with 21" storm sewer pipe. There is no contract line item for pipe replacement of this size, therefore an item was added to the contract.

X9100049 PRC FES 30 \$1,565.00

An existing 30" storm sewer was encountered at the start of the 84" culvert replacement at approximate station 200+30. The existing storm sewer was day-lighted in the streambank utilizing a precast flared end section. This item was added to the contract to cover the cost of that work.

X9100050 STORM SEWER REPLACEMENT DIP 10 \$817.00

An existing 10" storm line was encountered at a shallow depth in an existing driveway on Supreme just north of Thorndale. Due to the connection location and shallow depth, the storm line was replaced with 10" ductile iron pipe. There is no contract line item for 10" DIP storm sewer. This item was added to pay for that work.

X9100051 STORM SEWER REPLACEMENT DIP 18 #2,838.00

An existing 18" storm line was encountered at a shallow depth in an existing driveway on Supreme just north of Thorndale. The pipe was encountered at the same location as the 10" storm line noted on previous page. Due to the connection location and shallow depth, the storm line was replaced with 18" ductile iron pipe. There is no contract line item for 18" DIP storm sewer. This item was added to pay for that work.

X9100052 PRC FES 18 \$550.00

The 18" ductile iron pipe that was installed and noted above was day-lighted into the existing ditch in the easterly parkway area on Supreme. There is no contract line item for the precast flared end section in the 18" size required. This item was added to the contract to pay for that work.

**X9100053 STORM SEWER REMOVAL 27 \$780.00**

There were original line items in the contract that compensate the contractor for storm sewer removal of specific sizes. There was not a removal item for pipe of this size. This payment compensates the contractor for 60 linear feet of removal at the Supreme and Ellis intersection.

**X9100054 STORM SEWER REPLACEMENT DIP 24 \$1,520.00**

An existing 24" storm line was encountered during the installation of the 84" culvert replacement as it crossed the Ellis roadway. The existing 24" storm line was replaced with a section of 24" ductile iron pipe due to the elevation change of the storm sewer tie-in to the 84" culvert. The storm line was encountered in the parkway on the east side of Ellis at approximate station 214+14. There is no contract line item for 24" DIP installation. This item was added to the contract to pay for that work.

**X9100055 WINTER PAVING UNIT \$44,000.00**

The Supreme and Ellis roadways were to be completed by staging the work one lane at a time. The first stage of the work was completed in late November of 2011. At that time a joint meeting was held to determine if an attempt should be made to finish the second stage of the pavement work in colder and possibly snowy days in December. At that time it was determined to temporarily asphalt the centerline stage areas and any other necessary locations on Supreme and Ellis and open the roadways up for the winter. The stage two portions of Supreme and Ellis were completed in the spring of 2012 under more favorable weather conditions.

#### **CONCLUSION**

The forty-nine (49) items included in this change order total a deduction in costs of \$823,545.80. The modified contract total is \$10,703,163.96.

Enc. Table: Project Funding Status  
Change Order Form

**REQUEST FOR AUTHORIZATION OF CHANGES**  
**CHANGE ORDER NO. 4 (FINAL - PHASE I)**



Project Name: Northern Business District Reconstruction Project

To: Village of Bensenville  
717 E. Jefferson Street  
Bensenville, IL 60106

Contractor: A-Lamp Concrete / John Neri Construction  
1900 Wright Boulevard  
Schaumburg, IL 60193

Date: 2/19/2013

The following change from the Plans in the construction of the above designated project is recommended:

ITEM	DESCRIPTION	ADDITIONS	DEDUCTIONS
A	ORIGINAL CONTRACT LINE ITEMS (INCREASE)	\$546,698.62	
B	ORIGINAL CONTRACT LINE ITEMS (DECREASE)		\$1,604,344.33
C	BALANCING PREVIOUS CHANGE ORDER QUANTITIES (INCREASE)	\$78,307.18	
D	BALANCING PREVIOUS CHANGE ORDER QUANTITIES (DECREASE)		\$40,435.71
X9100002	MJ TAPPING SLEEVE & VALVE 12x12	\$9,135.00	
FRC08004	VALVE VAULT & VALVE VAULT REMOVAL	\$1,612.00	
FRC08014	SUPREME STORM SEWER ADJUSTMENT	\$893.00	
FRC08015	STORM SEWER MODIFICATION SUPREME	\$1,386.00	
X9100035	FIRE HYDRANT AND VALVE EXT 30"	\$1,655.00	
X9100037	FIRE HYDRANT AND VALVE EXT 12"	\$866.25	
FRC08026	STREET LIGHT FAULT REPAIR, THOMAS DR	\$3,955.17	
FRC08027	FENCE SIGHT SCREEN	\$594.87	
FRC08028	CRANE REMOBILIZATION	\$7,403.66	
FRC08029	GABION STONE BACKFILL 1001 INDUSTRIAL	\$1,042.13	
FRC08030	GABION STONE BACKFILL FAIRWAY, INDUSTRIAL, THOMAS	\$3,612.13	
FRC08031	EXCAVATE AND RELOCATE UTILITY FOR GABIONS	\$1,867.19	
FRC08032	REMOVE CONCRETE APRON FOR STREAMBANK GRADING	\$562.74	
FRC08033	HMA SURFACE REMOVAL MARK/83	\$3,248.99	
FRC08034	INSTALLATION OF HMA AT MARK/83	\$12,490.30	
FRC08039	ELECTRIC INSTALLATION FOR TEMP LIGHTING	\$1,018.87	
FRC08040	INSTALLATION OF SANITARY BYPASS	\$10,880.49	
FRC08041	LOCATE AND ADJUST BURIED SANITARY MANHOLES	\$5,591.59	
X9100038	EPOXY PAVT MARKING LETTERS & SYMBOLS	\$251.16	
X9100039	EPOXY PAVT MARKING LINE 4	\$1,833.26	
X9100040	EPOXY PAVT MARKING LINE 6	\$209.68	
X9100041	EPOXY PAVT MARKING LINE 12	\$112.13	
X9100042	EPOXY PAVT MARKING LINE 24	\$1,144.02	
X9100043	CLEAN AND VIDEO SANITARY TRUSS PIPE SSA3	\$1,143.45	
X9100044	CLEAN AND VIDEO SANITARY TRUSS PIPE SSA4	\$9,504.79	

FRC08042	REMOVE AND REPLACE EXISTING FIRE HYDRANT	\$7,715.97
FRC08043	TIE IN WATERMAIN TO EXISTING ON THOMAS	\$12,061.72
FRC08044	STREET LIGHTING HANDHOLE	\$2,215.30
FRC08045	STAND CONCRETE LIGHTPOLE SUPREME	\$805.18
FRC08046	CLEAR STREET LIGHT KNOCKDOWN	\$497.27
FRC08047	STAND CONCRETE LIGHTPOLE TOWER	\$394.06
FRC08048	CLEANING OF EXISTING BOX CULVERTS	\$19,723.00
FRC08049	CLEANING OF THOMAS BOX CULVERT	\$4,066.38
FRC08051	STONE FILL AT 1001 INDUSTRIAL	\$1,279.01
X9100045	SANITARY SEWER REPLACEMENT PVC 12	\$774.00
X9100046	ADJUST SANITARY SEWER 10 DIP	\$8,332.50
X9100047	STORM SEWER REMOVAL 30	\$2,175.00
X9100048	STORM SEWER REPLACEMENT RCP 21	\$2,105.20
X9100049	PRC FES 30	\$1,565.00
X9100050	STORM SEWER REPLACEMENT DIP 10	\$817.00
X9100051	STORM SEWER REPLACEMENT DIP 18	\$2,838.00
X9100052	PRC FES 18	\$550.00
X9100053	STORM SEWER REMOVAL 27	\$780.00
X9100054	STORM SEWER REPLACEMENT DIP 24	\$1,520.00
X9100055	WINTER PAVING UNIT	\$44,000.00

Amount of this Order:	<u>-\$823,545.78</u>
Amount of Previous Orders:	<u>\$752,530.07</u>
Original Contract Amount:	<u>\$10,774,179.69</u>
Original Contract Amount and Orders:	<u>\$10,703,163.98</u>

The work covered by this Order shall be performed under the same terms and conditions as that included in the Original Contract.

Requested by:	Dave Bugaj, Civiltech		
Reviewed by:	Joe Caracci, Director of Public Works, VOB		
Recommended by:	Joe Caracci, Director of Public Works, VOB		
Approved by:	Mike Cassady, Village Manager, VOB		
Accepted by:	Nick Neri, John Neri/A-Lamp JV		

**TYPE:** Resolution

**SUBMITTED BY:** Joe Caracci

**DATE:** 03/04/2013

**DESCRIPTION:** Resolution authorizing Amendment #1 to the Engineering Services Agreement with Civiltech Engineering Inc. for the Northern Business District Reconstruction Project for additional work outside the original scope in the amount of \$96,783

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/> <i>Financially Sound Village</i>	<input checked="" type="checkbox"/> <i>Enrich the lives of Residents</i>
<input checked="" type="checkbox"/> <i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/> <i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/> <i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/> <i>Vibrant Major Corridors</i>

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**COMMITTEE ACTION: I&E (unanimous approval)**

**DATE: 02/26/2013**

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**BACKGROUND:** On April 19, 2011, the Village Board approved an engineering services contract with Civiltech Engineering, Inc. for resident engineering services associated with the Northern Business District Reconstruction Project. The contract covered construction oversight for Phase I (SSA 3-8) of the project. The fee associated with Phase I work was \$855,434 which calculated out to 7.9% of the construction bid price of \$10,774,180.

**KEY ISSUES:** During the course of Phase I of this project, the schedule was extended due to unknown utility conflicts, changes in project scope, contractor delays, and other unforeseen issues. With anticipated poor weather in the forecast, the Project Team made a decision not to attempt to complete the project in 2011. Temporary patching was performed in order to make Supreme Drive drivable and maintainable for winter operations. The project restarted in Spring 2012 and was substantially complete in June 2012.

The original scope and timeframe submitted by Civiltech in their proposal had them working through December 2011. Due to the decision to postpone work in 2011, Civiltech accumulated 920 additional hours to continue oversight of the project. Additionally, Civiltech expended significant hours assisting the Village with our “special spoil” issue and helping the Village come up with a reasonable solution. The total requested value for Amendment #1 is 96,783, which would make Civiltech’s total cost for Phase I \$952,217. This equates to 8.9% of the anticipated final cost of Phase I.

Civiltech’s performance on this project has been exceptional. They were able to take a set of plans that included numerous errors and omissions, and deliver a project that resulted in a first class, high quality result. Although we have approved three (3) change orders to date totaling nearly \$621,600, we anticipate a final change order on Phase I that will result in a deduction of nearly \$700,000. This will actually put the final cost of Phase I under the bid amount. We are still in final negotiations with the Joint Venture on two remaining items. We are hopeful to have this Phase I final change order to the Village Board shortly.

**RECOMMENDATION:** Staff recommends approval of the engineering services amendment.

**ALTERNATIVES:** Discretion of the Village Board

**BUDGET IMPACT:** Funding for the project has been secured in the CY2012 Capital budget. Since all the work performed on this project occurred in 2012, we will post the costs to CY2012.

**ACTION REQUIRED:** Approval of Resolution to Authorizing the Execution of Amendment #1 to the Engineering Services Agreement with Civiltech Engineering, Inc. for the Northern Business District Reconstruction Project in the amount of \$96,783.

**RESOLUTION NO.**

**AUTHORIZING THE EXECUTION OF AMENDMENT #1 TO THE  
ENGINEERING SERVICES AGREEMENT WITH  
CIVILTECH ENGINEERING, INC. FOR  
THE NORTHERN BUSINESS DISTRICT RECONSTRUCTION PROJECT  
IN THE AMOUNT OF \$96,783**

WHEREAS the Village of Bensenville engaged in a comprehensive infrastructure improvements project entitled the Northern Business District Reconstruction Project (“PROJECT”); and

WHEREAS due to pending litigation at the time of bidding, the Village only awarded construction and resident engineering services on a portion of the project (SSA 3-8) (“PHASE I”); and

WHEREAS Civiltech Engineering, Inc. has performed the resident engineering services admirably on the first portion of the project; and

WHEREAS due to unforeseen delays in the project for Phase I, the project was extended into the 2012 construction season, and

WHEREAS Civiltech, in order to continue to oversee the project, expended an additional 920 hours of construction oversight resulting in a total additional expense of \$96,783, and

WHEREAS the Village desires to compensate Civiltech for their additional efforts on Phase I of the project.

NOW THEREFORE BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

THAT the Village Board authorizes the Village Manager to execute the necessary documents to Civiltech Engineering, Inc. of Itasca, IL for Amendment #1 to the Engineering Services Agreement for the Northern Business District Reconstruction Project in an amount of \$96,783.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, on this \_\_\_\_ day \_\_\_\_\_, 2013

APPROVED:

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Frank Soto  
Village President

ATTEST:

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Susan Janowiak  
Village Clerk

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

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

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

September 28, 2012

Mr. Joseph M. Caracci, P.E.  
Director of Public Works  
Village of Bensenville  
717 E. Jefferson Street  
Bensenville, Illinois 60106

**Re:** North Industrial Special Services Area Roadway and Utility Improvements Project; Amendment #1 to the Construction Engineering Agreement for the increase to the Phase I portion of the project

Dear Mr. Caracci:

The contractor is nearing completion of the field work for this project which is well after the originally estimated completion date. Therefore, we are now able to respectfully request a supplement (Amendment #1) to our Construction Engineering Services Agreement for required additional work in the amount of \$96,783. The original Civiltech Construction Engineering Agreement of \$855,434 was based upon the (Phase I) North Industrial Special Services Area Roadway and Utility Project's Plans / Special Provisions / Contract. As you are aware, the contractor went beyond the completion date before opening the roadway, and is still now working to complete the entire amount of work on the project. The increase in the time of the contractor's work on the site required additional construction engineering supervision as detailed below.

The contractor did not achieve the typical production rates for various work items during the project. Although they did have a considerable amount of manpower and crews on site, their inefficiencies led to more hours worked which then required more hours of engineering inspection. Each of their crews received the proper amount of inspection and attention as needed, but the amount of work actually completed on the site lagged behind. This lack of appropriate production led to the contractor opening the last segment of the road to traffic in 2012 rather than 2011 as planned. The construction engineering hours that were proposed for streambank inspection and project close out then had to be used to cover the additional inspection time.

The contractor has actually worked well past our original / pre-negotiation estimate of inspection time. Our first submittal of engineering hours for this Phase I portion of the project showed the work continuing into July of 2012. During negotiations, we were asked to reduce the engineering hours with the hope that the contractor could complete most of the road work in 2011 and the streambank work through the winter. The attached 2012 schedule from the signed agreement shows the removed hours. The actual project unfolded with the contractor performing the streambank work through the winter as hoped, but not finishing road work until 2012 during the time originally estimated for streambank completion. The time needed for inspection of all the Phase I worked more closely followed our pre-negotiated estimate. Fortunately, the total hours needed for all the required construction engineering did still come under the first estimate by 354 hours, but not as much as previously hoped.

We are requesting the actual required construction engineering time worked in 2012 of an additional 920 hours for the Senior Resident Engineer, Resident Engineer, and Documentation Engineer / Inspector. The attached Cost Estimate for Construction Services shows the total additional 920 hours needed and the calculation of the requested amount of \$96,783.00.

Please let us know if you have any questions or need anything else.

We truly appreciate your consideration of our request, and are grateful to have participated in this improvement with you that was ultimately a success for the Village and the travelling public.

Very truly yours,



James D. Ewers, P.E.  
Director of Construction  
Engineering Services  
**Civiltech Engineering, Inc.**

Requested by: \_\_\_\_\_

John Breitsameter, Civiltech

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

Approved by: \_\_\_\_\_

Frank Soto, Village President

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

Approved on \_\_\_\_\_ via Resolution \_\_\_\_\_

North Industrial SSA Roadway, Streambank Stabilization, and Utility Improvements

## Special Service Area

## Village of Bensenville

**Anticipated Contractor's Schedule (Sheet 2 of 2)**

## **Civiltech Staffing:**

**COST ESTIMATE OF CONSTRUCTION SERVICES**  
**PHASE III ENGINEERING SERVICES**  
**North Industrial SSA Roadway, Streambank Stabilization, and Utility Improvements**  
**Phase I; Amendment #1**  
**Village of Bensenville**

**Route:** North Industrial SSA Roadway Improvements  
**Local Agency:** Village of Bensenville  
**Section No.:** Special Service Area; Phase I; Amendment #1  
**Project No.:**  
**Job No.:**  
**County:** DuPage

\*Includes annual increase for work in 2012  
\*\*Firm's approved Over Head rate on file with IDOT's  
Bureau of Accounting and Auditing is 155.73%.  
This project will be held to 140.00 %  
\*\*\*Labor x 0.145 x 2.40 = Fixed Fee  
Complexity factor (R=0.00)

**Consultant: Civiltech Engineering, Inc.**

**Prepared: 9/28/2011**

ITEM	Employee Classification	Total Number of Manhours	Percent of Total	DOLLARS (\$)				
				Payroll Rate*	Payroll Costs	Payroll, Burden & Fringe Costs; Overhead & Expenses** (Labor x 1.40)	Profit*** (Labor x 0.35)	TOTAL
Construction Engineering:	Senior Res. Engr.	130	14.13%	\$ 44.00	\$ 5,720	\$ 8,008	\$ 2,002	\$ 15,730
	Res. Engr.	392	42.61%	\$ 41.00	\$ 16,072	\$ 22,501	\$ 5,625	\$ 44,198
	Asst. R.E.	0	0.00%	\$ 36.75	\$ -	\$ -	\$ -	\$ -
	Doc. Engr.	392	42.61%	\$ 29.70	\$ 11,642	\$ 16,299	\$ 4,075	\$ 32,016
	Engr.	0	0.00%	\$ 30.70	\$ -	\$ -	\$ -	\$ -
	Engr.	0	0.00%	\$ 33.00	\$ -	\$ -	\$ -	\$ -
	Technician	0	0.00%	\$ 15.00	\$ -	\$ -	\$ -	\$ -
	Surveyor	0	0.00%	\$ 33.50	\$ -	\$ -	\$ -	\$ -
	Proj. Mngr.	6	0.65%	\$ 63.00	\$ 378	\$ 529	\$ 132	\$ 1,039
Direct Expenses:								<b>SUBTOTAL</b> <b>\$ 92,983</b>
1.) Vehicle Expense (Mileage)								\$ 3,800
2.) Material Testing								
3.) Printing Expense								
4.) Photography								
5.) Website								
<b>TOTALS</b>		<b>920</b>	<b>100.00%</b>		<b>\$ 33,812</b>	<b>\$ 47,337</b>	<b>\$ 11,834</b>	<b>\$ 96,783</b>

- 1.) 95 Days @ \$40.00/Day
- 2.) Material Testing (Midland Standard Engineering & Testing, Inc.)
- 3.) Estimated printing expense for Record Drawings
- 4.) Estimated photography expense
- 5.) Website domain & brochures costs

**TYPE:** Resolution

**SUBMITTED BY:** Joe Caracci

**DATE:** 03/04/2013

**DESCRIPTION:** Resolution authorizing an engineering contract amendment with Civiltech Engineering Inc. for the Northern Business District Reconstruction Project to incorporate Alternate 5 (SSA#9) in the amount of \$591,853

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input checked="" type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input checked="" type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/>	<i>Vibrant Major Corridors</i>

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**COMMITTEE ACTION: I&E (unanimous approval)**

**DATE: 02/26/2013**

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**BACKGROUND:** On April 19, 2011, the Village Board approved an engineering services contract with Civiltech Engineering, Inc. for resident engineering services associated with the Northern Business District Reconstruction Project. The contract covered construction oversight for Phase I (SSA 3-8) of the project. The fee associated with Phase I work was \$855,434 which calculated out to 7.9% of the construction bid price of \$10,774,180. Amendment #1, in the amount of \$96,783, was presented earlier.

**KEY ISSUES:** It is the desire and recommendation of staff to continue Phase II on the project with the same Project Team as Phase I. Civiltech Engineering has performed admirably on Phase I of this project and has proven their skills and experience are critical in handling a project of this size. Civiltech has provided exceptional communication between Village, contractor, and property owner. Their efforts maintaining the project website have been appreciated by staff and property owners alike. Civiltech also played a vital role in the handling of questionable soils on Phase I and maintained the Village's best interests during the process. Many tasks not seen in the public's eye is why Civiltech excels at Construction Management. We continue to get positive comments regarding Civiltech's handling of difficult situations and prompt attention to issues.

Another key element to consider in continuing our relationship with Civiltech is that they have a thorough understanding of the makeup and position of the property owners in the area. Civiltech has been communicating regularly with property owners in the SSA #9 area regarding status of litigation, schedule of project, and expectations. The property owners already have a relationship with Civiltech and keeping Civiltech onboard will ease the transition from project delay to project implementation.

Civiltech has also been able to manage their work effort and adjust their personnel as the project has gone along. Their initial proposal anticipated substantial completion in November 2011. They identified the possibilities of delay and shifted personnel to stay within budget. We are currently at or below budget on Phase I with respect to construction engineering.

Civiltech was asked to provide a work effort and fee analysis to perform Phase II of this project. Their anticipated effort includes nearly 5,000 personnel hours and includes subcontracted material testing costs. Their proposed fee totals \$591,853, of which, about \$72,300 is included for material testing. This not-to-exceed fee equates to 8.1% of the construction bid price of \$7,223,452. Construction engineering costs typically fall in the 7-10% range.

**RECOMMENDATION:** Staff recommends approval of the contract amendment.

**ALTERNATIVES:** Discretion of the Village Board

**BUDGET IMPACT:** Funding for the project has been secured in the CY2013 budget. (multiple TIF funds are being utilized)

**ACTION REQUIRED:** Approval of Resolution to Authorizing the Execution of a Contract Amendment with Civiltech Engineering, Inc. for the Northern Business District Reconstruction Project to incorporate Alternate 5 (SSA #9) in the amount of \$591,853

**RESOLUTION NO.**

**AUTHORIZING THE EXECUTION OF AMENDMENT #2 TO THE  
ENGINEERING SERVICES AGREEMENT WITH  
CIVILTECH ENGINEERING, INC. FOR  
THE NORTHERN BUSINESS DISTRICT RECONSTRUCTION PROJECT  
IN THE AMOUNT OF \$591,853**

WHEREAS the Village of Bensenville engaged in a comprehensive infrastructure improvements project entitled the Northern Business District Reconstruction Project ("PROJECT"); and

WHEREAS due to pending litigation at the time of bidding, the Village only awarded construction and resident engineering services on a portion of the project (SSA 3-8); and

WHEREAS Civiltech Engineering, Inc. has performed the resident engineering services admirably on the first portion of the project; and

WHEREAS Civiltech has submitted a proposal which includes nearly 5,000 hours of inspection and oversite time, material testing services, website development and management, and direct costs resulting in a total additional expense of \$591,853, and

WHEREAS the Village is now in a position and desire to award the remaining resident engineering services (SSA 9) to the Civiltech Engineering, and

WHEREAS Civiltech understands our current litigation situation and agrees to nullify and void the contract should the project be cancelled due to litigation results.

NOW THEREFORE BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

THAT the Village Board authorizes the Village Manager to execute the necessary documents to Civiltech Engineering, Inc. of Itasca, IL for Amendment #2 to the Engineering Services Agreement for the Northern Business District Reconstruction Project in an amount of \$591,853.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, on this \_\_\_\_ day \_\_\_\_\_, 2013

APPROVED:

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Frank Soto  
Village President

ATTEST:

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Susan Janowiak  
Village Clerk

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

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

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

September 28, 2012

Mr. Joseph M. Caracci, P.E.  
Director of Public Works  
Village of Bensenville  
717 E. Jefferson Street  
Bensenville, Illinois 60106

**Re:** North Industrial Special Services Area Roadway and Utility Improvements Project  
Amendment #2 to the Construction Engineering Agreement to include (PhaseII) SSA 9

Dear Mr. Caracci:

We are pleased to submit our Amendment #2 to the Construction Engineering Agreement to include the required professional engineering inspection services for the (Phase II) Special Services Area 9. Thank you for your vote of confidence in our work performed last year on the original Northern Business District Project (Phase I). It is always our goal to fully satisfy our clients / partners, so they prefer to continue our working relationship on new improvements.

Please find attached to this cover letter our Scope of Services, the Anticipated Schedule of Hours, the Cost Estimate of Consultant Services, the Direct Cost sheet, and the backup from our material testing sub-consultant Midland Standard Engineering & Testing.

Our Scope of Services is the same as what we performed for the original Northern Business District Project. We will continue to provide the same excellent engineering services you have received. The Village of Bensenville's Scope of Services is also attached. We will execute the items listed, and have further explained how we will accomplish each task in our Scope.

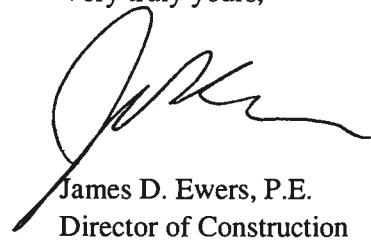
The approach the Village of Bensenville has chosen to continue with Civiltech as an amendment to the engineering agreement will prove to be a cost savings. There will be no duplication of tasks or services between the original project and SSA 9. Our forces will already be on site completing the original project, and will be able to split their duties between the improvements when one project has a lull. This saves the cost of additional inspectors that would occur if more than one firm were present. We will also continue our cost savings staffing approach utilizing our Senior Resident Engineer split between this improvement and another. As you are aware, the Village has truly benefitted by gaining the full knowledge and experience of our Senior RE at a reduced number of hours. Finally, we will also maintain the reduced billing factor that we used on the original agreement which is below our IDOT approved overhead rate and results in significant savings.

Per our recent discussions to further cost reduction, we propose to continue our construction engineering services to include the work on SSA 9 for the "not to exceed" fee of \$591,853. Our approved IDOT overhead rate for fiscal year ending December 31, 2011 is 154.35%. Using this approved IDOT overhead rate and the IDOT profit formula (14.5% x 2.5435 x direct labor) results in an overall billing factor of 2.91. So that we may provide our premium engineering services in the most efficient manner, Civiltech

will hold its overall billing factor to **2.75 x direct labor** for the Village of Bensenville. Direct costs such as printing, vehicle expenses (\$40.00/day), and sub-consultant costs will be billed at their actual cost.

We very much appreciate this opportunity to submit this amendment to further furnish Construction Engineering Services. Being asked by our clients to repeat our services is our ultimate goal, and the highest compliment we can receive. We believe the proposed / existing Civiltech Team is by far the most qualified to bring exceptional administration to the North Industrial Park Special Service Area 9 Roadway Improvements. We look forward to assisting the Village of Bensenville in continuing to make this project a great success for all involved.

Very truly yours,



James D. Ewers, P.E.  
Director of Construction  
Engineering Services  
**Civiltech Engineering, Inc.**

Requested by: \_\_\_\_\_

John Breitsameter, Civiltech

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

Approved by: \_\_\_\_\_

Frank Soto, Village President

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

Approved on \_\_\_\_\_ via Resolution \_\_\_\_\_

## **Exhibit A**

### **North Industrial Park Special Service Area 9 Roadway and Utility Improvements**

#### **Civiltech Engineering**

#### **SCOPE OF SERVICES**

Civiltech will provide a Senior Resident Engineer, Resident Engineer, Assistant Resident Engineer, Inspectors, and Surveyor as needed who are fully experienced in the administration of the contract work listed above. When the amount or type of work necessitates it, additional inspectors, designers, or structural engineers will be available. Our Senior Resident Engineer will act as a liaison between the Village of Bensenville and the contractor, residents, business owners, and any other concerned party.

The Resident Engineer and Project Manager will be responsible for when the additional inspectors are assigned while keeping the budget in mind. A Project Manager will also ensure the quality of our services and facilitate the multiple levels of coordination that are required for a project of this complexity. Our surveyor will be available for initial layout of control points and construction staking verification, and our Resident Engineer is also qualified to perform the layout. We agree with all the tasks listed in the Village's General Scope of Services which are attached for reference, and we would like to expand upon them in more detail.

#### **COORDINATION**

Our project team excels as liaisons between our clients and the multiple stakeholders of a project. We will coordinate all project issues with the involved parties and relate them back to the Village for your information or approval. We understand that close communication with the Village, businesses, and IDOT is of the utmost importance. Our goal will be to preempt any calls to the Village regarding the projects, since we would have already been in contact with that utility, property owner, business, developer, etc. We will update the Village on the status of any issues and forward recommendations when needed. Our status updates to the Village will include any major project issues and their effect on the progress schedule.

Civiltech will hold progress meetings every week or as often as needed, depending on the amount of project activity. All concern parties will be invited. The contractors will be required to provide and discuss a two week look-ahead schedule. The first portion of the meeting will be devoted to the coordination of project work and schedule between all of the concerned participants, the contractor, Village Departments including the Police and Fire Departments, and especially the Village. This is an invaluable tool to keep all informed, preempt initial calls to the Village, and keep on track towards a successful completion of the projects. When concerns of the individual parties have been satisfied, they may leave, and we will continue with more in depth project monitoring with the contractor regarding pay items, contract changes, staging, status of submittals, overall schedule, etc. We will work with the contractor to resolve all issues and keep the project moving forward. The actual progress of the project will be closely tracked as it compares with the overall project schedule. If a contractor falls behind, we will investigate and recommend possibilities to get back on schedule. Meeting minutes will be prepared, distributed to the appropriate parties, and filed in the project records. Civiltech's experience with bringing projects to a successful completion through our detailed construction inspection and administration services, as well as thorough coordination, has been proven on many of our past projects.

Coordination with the company / companies that operate the railroad spurs will be required for flaggers, and potential crossings replacements during the road construction. We know the challenges of working with railroads, and our experience will show as we provide ample time for their reviews of any adjacent work near their tracks.

We have established relationships and coordination experience with IDOT, DuPage County, and many other agencies whose input will be needed to successfully complete this project. Our inspection abilities with regard to pavement reconstruction, undercuts for a stable base, railroads, under ground work, utility coordination, and many other roadway items have been proven over the years on multiple similar projects. Our true strength and experience shows best when we are solving unknown problems which arise on all projects.

## **COMMUNICATION / PUBLIC NOTIFICATION**

Public notification and communication will be critical for this improvement. Civiltech is committed to keeping all the involved parties fully informed so they can be contributing players. Proper notification will be accomplished with multiple forms of communication from changeable message signs along the project to informational flyers to what we consider the best communication which is face to face with the actual owners / operators of the individual properties.

## **Public Meetings**

We have had success on past projects with an informal open house style Public Meeting prior to construction. In order to keep the lines of communication with the businesses fully open, we will host and / or participate in a Public Information Meeting before construction when the contractor and their schedule become known. An additional meeting between stages of construction or during the project's progress can also be included. We will build on the contacts made at these meetings so that each property along the project is well informed and becomes a true stakeholder in the process. It is this personal contact that brought success to our former projects and will solve the coordination and information challenges of this improvement as well. When people understand what needs to happen in front of their property and how long each activity will last, they can better accommodate the work and still get their business done. We have received many compliments and "thank you's" from satisfied property owners who were truly part of the process. The inconvenience of the rehabilitation is greatly reduced when the stakeholder is working with us to determine the best solution.

## **Website**

Civiltech has developed and supported dynamic websites for previous projects, and will create one for this project. Of course the most important aspect of the webpage would be to announce construction alerts, stage changes, other news concerning the project, and be able to accept and answer questions regarding the improvement. We would keep the site updated with pertinent information and photos. It is an excellent and efficient tool for spreading project status and keeping the public fully informed. We will have a person dedicated to maintaining the website with daily and even more frequent updates regarding the construction status. Visitors to the website will be able to contact our website administrator either over the internet or the provided phone number. We are committed to having a person answer the phone or call back within a very short time. A friendly voice on the end of the line is one of the most calming features of good communications. If the question cannot be answered immediately, our administrator will have the Senior RE contact the resident. The phone number of the Senior RE will be given out regardless of whether the question is answered immediately or not. The North Industrial SSA Improvement website will be attractive and informative. Most visitors will be satisfied and have their questions answered on the spot through the ample amounts of project information that will be listed.

## **Individual Contact and Communication**

We will have one point of contact for the individual stakeholders along the project. That point of contact will be our Senior Resident Engineer. This has proven to be very successful

on past projects as the best way to keep everyone fully informed and a working partner on the improvement. Initial contact may come from the website, but once the representative from each property is known, our Senior RE will communicate all information regarding their portion of the project directly with them. We will communicate in detail what work will occur in front of their establishments, when to expect the work, and how long it will last. The schedule of the work is always a difficult item to nail down with contractors, so we will enforce that they provide realistic time frames for driveway access which if not met will be corrected with an assessed fine. Working with the individual business representatives to determine the best access and schedule for construction has been proven on our past business park projects to be the best method to make certain that their concerns are met and their operations run as smooth as they can.

## **CONSTRUCTION ENGINEERING SERVICES**

Civiltech's team will accomplish the goal of providing the excellent Construction Engineering Services we are known for by using our typical project approach, which has brought us success on our past projects. Our project approach will be to divide the work into three phases:

- Pre-construction
- Construction
- Completion and Final

### **Pre-construction**

#### **Plan Review**

Civiltech has performed and will continue with an even more detailed review of the plans and special provisions as they relate to the most recent existing conditions on site to determine if there are any potential conflicts that could be addressed and resolved before construction.

#### **Stakeholder Coordination**

We will initiate or continue coordination with all stakeholders in the project including businesses, developers, adjacent contractors, utilities, other agencies, and property owners. Pre-project field meetings will be held with any of the above mentioned entities necessary to resolve potential issues and keep them fully informed. All concerned parties would be encouraged to attend the Pre-construction Meeting.

## **Contractors and Contacts**

A list of names, addresses, and telephone numbers (especially 24 hour emergency contact numbers) will be compiled and maintained for all contractors, subcontractors, material suppliers, and any others pertinent to the project. We will make recommendations to the Village regarding the suitability of the proposed subcontractors.

## **Traffic Staging Review**

The staging and maintenance of traffic will be reviewed as they relate to field conditions. We will forward our comments to the contractor highlighting concerns that may limit traffic moving safely while the contractor has enough room to work.

## **Field Review**

We will thoroughly investigate the field conditions of the project exposing conflicts so that the proposed improvements can be constructed without them. The geometric control points will be set at this time as well.

## **Initial Documentation**

Field books, quantity book, diary, and all other forms of proper project documentation will be set up per Illinois Department of Transportation (IDOT) Standards. Existing conditions photos will be taken. Important submittals will be requested from the contractor and they will be required to show those submittals on their proposed schedule.

## **Progress Schedule Review**

We will review the contractor's proposed schedule for constructability, to verify that all controlling as well as major items are shown within the context of the staging, and whether it is reasonable as compared to our experience with production rates.

## **Construction**

### **Construction Layout Verification**

Our Resident Engineer or surveyor will provide the construction layout verification and their interpretation of the grades. Before any material is placed, a final review will be made checking that the proposed lines and grades have been met, make sense, and all transitions are smooth.

## **On Site Inspection**

Civiltech will perform all on site inspection of the contractors' work and operations enforcing compliance with the plans and specifications. Any variations found will either be corrected or a sound solution will be formulated and forwarded to the Village for approval.

## **Individual Item Inspection**

Our project team has substantial experience with bituminous paving which will be used to guide the contractor. We will conduct a pre-pave meeting to establish the best practices with the contractor, reviewing the proper equipment needed, size of crew, and rate of placement. Among all the requirements, we will focus on proper equipment, especially the use of a ski for smoothness and the required rollers to achieve density. The underground work will be closely coordinated with the contractor and utilities. Our abilities in this type of work will be evident as unknown conflicts that arise are quickly resolved. Our abilities are enhanced by the powerful backup team of designers who are available should questions arise.

## **Material Testing and Quality Assurance**

It is understood that the contractor will be performing Quality Control for the materials incorporated into this project. We will provide Quality Assurance for material inspection at HMA and PCC plants as well as the job site with our sub-consultant Midland Standard Engineering & Testing, Inc. Reports will be completed daily. Our IDOT Level II trained Resident Engineer and assistant can perform the on-site QA material testing for small quantities when needed. We have the knowledge and capability to respond quickly to any material problems that may arise. We will keep in constant communication, so recommendations for changes if needed can be submitted and approved without delaying the project. As always, any items lacking proper inspection from the contractor will be measured, but not paid. We will deliver updated holdback reports to the contractors, so they know what is deficient and can re-familiarize themselves with what we have already instructed them is required for payment.

## **Project Documentation**

Civiltech will document all project activities daily in the diary, field books, and inspectors' daily reports (IDR's). Weekly reports of the project's progress will be forwarded to the Village and the contractor. These weekly reports will be one of the tools used to review the progress of the work with the contractor and what should be done to stay on schedule. Measurements of work completed will be documented daily, posted to the quantity book, and when possible, agreed to with the contractor.

## **Submittal Review**

Important submittals will be required from the contractor early on in the project and repeatedly requested if they are not received in a timely fashion. We will review them, return them to the contractor for any revisions, and forward them to the Village with our recommendations for approval. A status file of submittals will be maintained for tracking purposes, and we will verify that what is shown in the approved submittal is incorporated into the project. Any contractor requests for information or changes will also be reviewed and recommendations given to the Village.

## **Contract Changes**

No substantial changes in contract work or quantities will be done without the prior approval of the Village of Bensenville and IDOT. We will investigate the reason for any change and forward our recommendations to the Village for approval. As the Village's representative and as part of our construction engineering services, our Resident Engineer will make decisions and interpretations regarding the improvement that do not substantially increase the cost or negatively affect its overall quality. We will keep the Village informed of these decisions and, as mentioned above, seek their opinion on items that will impact the overall projects. Actual authorizations for change orders will include all necessary items and detailed reasons. We will maintain a record of the dollar total for all changes and provide direction toward keeping the costs within the budget.

## **Pay Estimates**

Pay estimates will be compiled regularly as a reasonable amount of work is completed, typically on a monthly basis. Only items that have been measured and thoroughly checked in the quantity book and IDR's will be placed on the estimates. The contractor will have an opportunity to review them as well before processing, but as stated before, no item will be paid without the proper material inspection.

## **Traffic Control Inspection**

Civiltech will review the traffic control for correct installation. We will look for and enforce not only compliance with the traffic control standards, but keep an eye towards how it appears to the everyday motorists. It should be clear where to safely travel. The traffic control will be inspected at least twice a day and in actuality whenever we travel through the project. Night inspections for verifying equipment reflectivity, steady-burn light outages, striping, and after hours traffic safety will be performed regularly. We will keep the Village and the contractor informed of the traffic control status daily, document any deficiencies, and forward them onto the contractor for immediate action. Should the contractor fail to correct the deficiencies in a

timely manner, they will be charged damages per the contract. It should be clear where to travel through a project that is safely controlled.

## **Completion and Final**

### **Contractor's Punchlist**

We will enlist items from all those involved with the project. Then, after our detailed inspection and the Village of Bensenville's full input, we will produce a final punchlist for the contractor to finish before the project will be considered complete. Constant communication and follow up with the contractor will be performed to ensure that all items and stakeholders are satisfied with the completed work. Only when all punchlist items are completed will we make recommendations to the Village concerning final acceptance.

### **Final Inspection**

The final inspection for the project will be held when all items of the punchlist have been completed. We will conduct the final inspection with all interested parties present, most importantly the Village's representatives. Separate final inspections will be held when required by other agencies, such as IDOT.

### **Final Documentation**

All pay items will be final measured, calculated, and checked. They will be marked and posted as final on the IDR's and in the quantity book. We will provide all supporting documentation, as well as the necessary cross referencing, so the final quantities are clear and can be easily verified.

### **Material Certification**

We will work closely with the contractor to resolve all the material deficiencies that may still be present on the holdback reports. Any material inspection required for quality assurance will be reviewed for accuracy and completeness. We are committed to resolving all material deficiencies. However, if after we do all we possibly can to help and the contractor still can not provide what is needed, those deficient items will not be paid.

### **Final Pay Estimate**

Only after all final measurements have been verified and material inspection assured will we create the final pay estimate and forward it to the Village for approval.

## **Project Records**

Civiltech will compile all the project records in an orderly fashion. They will be labeled, arranged, and a table of contents provided for easy review. The completed set of records will be promptly submitted to the Village of Bensenville.

Our Resident Engineer will be responsible for decisions, such as when to call in our surveyor or when to perform the work themselves. It is with good staff planning that Civiltech stays within project budgets. Our knowledge of IDOT's Quality Assurance requirements keeps the cost for material inspection to a minimum by only testing at the needed frequency. We enforce that the contractor's Quality Control provides the full amount of testing as required.

## **UTILITY COORDINATION**

As soon as allowable, Civiltech would continue the utility coordination already accomplished for this project, and keep all parties informed of the deadlines that will allow the contract work to move forward. It should still be anticipated that some facilities will be in conflict during the project and other unknown conflicts will appear. The large amount of underground work will necessitate coordination with multiple utility companies. The contractors and their subcontractors must work closely with affected utilities and incorporate any relocation schedules into their own. Civiltech will include utility discussions at the progress meetings and promote the essential coordination between the utility companies and the contractor.

## **PLAN REVISION REFLECTING AS-BUILT CONDITIONS**

The contractor's record drawings will be reviewed for accuracy and all dimensions shown will be verified. We will also provide a detailed set of "As Built" drawings for the Village's permanent records in the size, format, and on the type of paper as directed. All changes will be noted and the drawings will be reproducible. We have the capability to document "As Built" conditions with GIS. Civiltech has found that the best method to create an accurate record drawing is to update an original plan set as the project progresses, not just at the end. This method also ensures a timely completion of the record sets.

**KANE COUNTY**  
**Division of Transportation**

**Kirk Road and IL Rt 56  
 Intersection Improvement**

[Home](#) | [About the Project](#) | [Schedule](#) | [See Our Progress](#) | [Project Gallery](#) | [The Team](#) | [Contact us](#)

**Kirk Road and IL Route 56**

**09.22.08 – CONSTRUCTION UPDATE:  
 LANDSCAPING WORK**

Last week the Contractor completed most of the landscaping work in the Kirk and Farnsworth medians. There are also 15 trees that will be planted in the month of October.

**08.29.08 – CONSTRUCTION UPDATE  
 ALL INTERSECTION LANES OPEN!**

As of today the Contractor has finished all major construction activities related to the intersection improvement. All lanes of traffic are now open.

Over the next four weeks the Contractor will be on site to finish miscellaneous items such as landscaping, roadway lighting and general site clean-up.

Please continue to stay alert and obey the construction speed limits while driving through the intersection. Thank you for your continued patience.

**08.08.08 – TRAFFIC ALERT**



**Progress Meter**

**90%**



**Kirk Road aerial**

**Kirk Road and IL Route 56**

The Kirk Road and Illinois Route 56 Intersection Improvement project began in September of 2007 and is scheduled for completion in August 2008. Please use this website to keep up on project status, detours, and construction photos.

## WEB SITE EXAMPLE

Civiltech has hosted a number of project related web sites. Shown here is the web site we did for **Kane County Division of Transportation's Kirk Road and Route 56** project.

# RESIDENT ENGINEERING

## GENERAL SCOPE OF SERVICES

The ENGINEER will perform or be responsible for the performance of the following services in connection with this project. The ENGINEER shall furnish or cause to be furnished qualified engineers, construction observers and / or technical personnel to perform the following services including, but not limited to, the following tasks:

1. Attend and lead a pre-construction conference with the contractor, VILLAGE, and other parties.
2. Obtain from the contractor a list of proposed suppliers and subcontractors. Make recommendations to the Village regarding the suitability of the subcontractors for the proposed work.
3. Review the construction schedule submitted by the contractor for compliance with the contract.
4. Check and approve, or reject and request resubmittal of, any submittals made by the contractor for compliance with the contract documents.
5. Provide all construction staking. Establish all base lines, construction stakes, and benchmarks necessary for locating the principal components of the work.
6. Observe the progress and quality of the executed work. Determine if the work is proceeding in accordance with the Contract Documents. The ENGINEER shall keep the VILLAGE informed of the progress of the work, guard the VILLAGE against defects and deficiencies in the work, advise the VILLAGE of all observed deficiencies of the work and disapprove or reject all work failing to conform to the Contract Documents.
7. Provide extensive on-site observations of the work in progress and field checks of materials and equipment through a Resident Engineer or Inspector, who shall:
  - Serve as the VILLAGE'S liaison with the contractor working principally through the contractor's field superintendent.
  - Be present whenever the contractor is performing work on-site, associated with the project.
  - Cooperate with the contractor in dealing with the various local agencies having jurisdiction over the Project in order to complete service connections to public utilities and facilities.
  - Attend all construction conferences. Arrange a schedule of progress meetings and other job conferences as required. Maintain and circulate copies of records of the meetings.
  - Review contractor's progress on a regularly scheduled basis (weekly or other appropriate interval) and update the progress schedule. Compare actual progress to the contractor's approved schedule. If the project falls behind schedule, work with the contractor to determine the appropriate course of action to get back on schedule.
  - Arrange for any required material testing required under the contract with the ENGINEER'S geotechnical consultant.
  - Coordinate with residents and VILLAGE regarding the Village's sidewalk policy and the Village's driveway apron upgrade program within the project area. Answer resident questions concerning the policy, program and the project.
  - Perform weekly barricade checks. The inspection shall be made between sunset and sunrise. The Barricade Check Reports shall be completed and delivered to the Public Works Department. Notify the contractor of, and take appropriate steps to correct, any deficiencies noted.
  - Maintain orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original contract documents including all addenda, change orders and additional drawings issued subsequent to the award of the contract.
  - Record names, addresses and telephone numbers of all contractors, subcontractors, and major material suppliers.

- Prepare payment requisitions and change orders. Review applications for payment with the Contractor for compliance with established submission procedure and forward them with recommendations to the VILLAGE.
- Prior to final inspection, submit to the contractor a list of observed items requiring correction and verify that each correction has been made.
- Conduct final inspection with the VILLAGE and prepare a final list of items to be corrected.
- Verify that all items on the final list have been corrected and make recommendations to the VILLAGE concerning project acceptance.
- Except upon written instructions of the VILLAGE, the Resident Engineer or Inspector shall not authorize any deviation from the Contract Documents.
- Prepare and distribute daily / weekly / bi-weekly / monthly informational notifications / newsletters for residents and businesses.
- Carry and utilize a Nextel compatible phone during contractor's working hours (usually 7a.m. to 5 p.m.).

8. Keep an inspector's daily report book in the VILLAGE'S format, or other required format appropriate for the project, recording hours on the job site, weather conditions, general and specific observations, daily activities, quantities placed, inspections, decisions, and list of visiting officials.

9. Determine if the project has been completed in accordance with the contract document and if the contractor has fulfilled all obligations.

10. Shop Drawings and Contractor Submittals:

- Record data received, maintain a file of drawings and submissions, and check construction for compliance with them.
- Review Contractor's submittals for compliance with contract documents. Notify the VILLAGE of any deviations or substitutions. With the notification, provide the VILLAGE with a recommendation for acceptance or denial, and request direction from the VILLAGE regarding the deviation or substitution.
- Alert the Contractor's field superintendent when materials or equipment are being installed before approval of shop drawings or samples, where such are required, and advise the VILLAGE when it is necessary to disapprove work as failing to conform to the Contract Documents.

11. Record Drawings:

- Document the location (vertically and horizontally) of sewer and water services.
- Maintain a set of Record Drawings on which all changes are noted. Deliver both a reproducible set of drawings and Autocad drawing file(s) on CD ROM to the VILLAGE at the completion of the Project.
- The Resident Engineer shall deliver a draft of the record drawings for the underground utilities within one month of the substantial completion of the construction of the underground utilities. This submittal shall include both the full size plans and the individual service location sheets.

12. The ENGINEER shall comply with the VILLAGE Personal Protective Equipment (PPE) policy. The policy at minimum requires anyone on a construction site to wear a safety vest and steel-toed shoes. Various situations calling for further safety requirements are indicated in the policy.

## **North Industrial SSA 9 Roadway and Utility Improvements**

## Special Service Area

# Village of Bensenville

### **Anticipated Contractor's Schedule**

## **Civiltech Staffing:**

**COST ESTIMATE OF CONSTRUCTION SERVICES**  
**PHASE III ENGINEERING SERVICES**  
**North Industrial SSA 9 Roadway and Utility Improvements**  
**Village of Bensenville**

**Route:** North Industrial SSA 9 Roadway Improvements  
**Local Agency:** Village of Bensenville  
**Section No.:** Special Service Area 9  
**Project No.:**  
**Job No.:**  
**County:** DuPage

\*Includes annual increase for work in 2012  
\*\*Firm's approved Over Head rate on file with IDOT's  
Bureau of Accounting and Auditing is 154.35%.  
This project will be held to 140.00 %  
\*\*\*Labor x 0.145 x 2.40 = Fixed Fee  
Complexity factor (R=0.00)

**Consultant: Civiltech Engineering, Inc.**

**Revised: 1/12/2012**

ITEM	Employee Classification	Total Number of Manhours	Percent of Total	DOLLARS (\$)				
				Payroll Rate*	Payroll Costs	Payroll, Burden & Fringe Costs; Overhead & Expenses** (Labor x 1.40)	Profit*** (Labor x 0.35)	TOTAL
Construction Engineering:	Senior Res. Engr.	908	18.35%	\$ 44.00	\$ 39,952	\$ 55,933	\$ 13,983	\$ 109,868
	Res. Engr.	1,669	33.72%	\$ 41.00	\$ 68,429	\$ 95,801	\$ 23,950	\$ 188,180
	Asst. R.E.	1,389	28.07%	\$ 36.75	\$ 51,046	\$ 71,464	\$ 17,866	\$ 140,376
	Doc. Engr.	0	0.00%	\$ 29.90	\$ -	\$ -	\$ -	\$ -
	Engr.	0	0.00%	\$ 30.70	\$ -	\$ -	\$ -	\$ -
	Engr.	0	0.00%	\$ 33.00	\$ -	\$ -	\$ -	\$ -
	Technician	697	14.08%	\$ 15.00	\$ 10,455	\$ 14,637	\$ 3,659	\$ 28,751
	Surveyor	216	4.36%	\$ 33.50	\$ 7,236	\$ 10,130	\$ 2,533	\$ 19,899
	Proj. Mngr.	70	1.41%	\$ 63.00	\$ 4,410	\$ 6,174	\$ 1,544	\$ 12,128
								<b>SUBTOTAL \$ 499,202</b>
Direct Expenses:								
1.) Vehicle Expense (Mileage)								\$ 18,600
2.) Material Testing								\$ 72,271
3.) Printing Expense								\$ 380
4.) Photography								\$ 300
5.) Website								\$ 1,100
<b>TOTALS</b>		<b>4,949</b>	<b>100.00%</b>		<b>\$ 181,528</b>	<b>\$ 254,139</b>	<b>\$ 63,535</b>	<b>\$ 591,853</b>

- 1.) 465 Days @ \$40.00/Day
- 2.) Material Testing (Midland Standard Engineering & Testing, Inc.)
- 3.) Estimated printing expense for Record Drawings
- 4.) Estimated photography expense
- 5.) Website domain & brochures costs

## **North Industrial SSA 9 Roadway and Utility Improvements Summary of Direct Costs**

**Route:** North Industrial SSA 9 Roadway Improvements  
**Local Agency:** Village of Bensenville  
**Section:** Special Service Area 9  
**Proj. No.:**  
**Job No.:**  
**County:** DuPage  
**Contract No.:**

### **Direct Costs:**

#### **Printing Expense**

Assume 3 large sets for working drawings & 1 set for final "As-Builts"

Bond Prints: 3 sets X 103 sheets/set X \$0.66 per sheet = \$203.94

Mylars: 1 set X 103 sheets/set X \$1.75 per sheet = \$180.25

Total = \$384.19

**Say: \$380.00**

#### **Photography Expense**

Assume 30 sets of developed digital pictures @ \$10.00 ea. = \$300.00

**Total: \$300.00**

MIDLAND STANDARD ENGINEERING & TESTING, INC.  
558 Plate Drive Unit 6  
East Dundee, Illinois 60118  
(847) 844-1895 f (847) 844-3875

January 11, 2012

Mr. James D. Ewers, P.E.  
**Civiltech Engineering, Inc.**  
450 E. Devon Avenue  
Suite 300  
Itasca, Illinois 60143

Re: **Quality Assurance Inspection and Testing Services**  
**North Industrial SSA Roadway, Streambank, Utility Improvements, SSA 9**  
Bensenville, Illinois

Dear Mr. Ewers:

We have prepared this unit rate and cost estimate proposal to provide Quality Assurance services for your project in the Bensenville, Illinois. In this proposal we have included rates for personnel, equipment and materials to conduct field and plant inspection for HMA pavements, portland cement concrete, field inspection of subgrade soils and backfill, laboratory testing and documentation required.

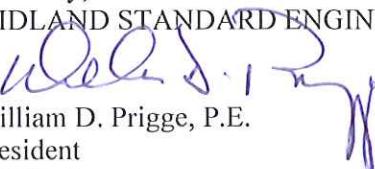
We propose to provide the necessary inspections and testing using experienced, certified personnel and recognized test procedures developed by IDOT, ASTM, AASHTO, ACI, etc. Our services would be provided at the request of your designated representative on a unit rate basis in accordance with the Schedules of Services and Fees-Attachment 1, included in this proposal package. The final cost of these services will be based upon the total amount of work performed.

We are staffed and equipped to aid you in the successful completion of your projects and are available to discuss any aspect of our proposal at your convenience.

Based on the project information submitted we have prepared cost estimates for the anticipated work. The estimate submitted assumes PREVAILING WAGE work. The final cost of these services will be based upon the total amount of work performed.

We are staffed and equipped to aid you in the successful completion of your projects and are available to discuss any aspect of our proposal at your convenience.

Sincerely,  
MIDLAND STANDARD ENGINEERING & TESTING, INC.

  
William D. Prigge, P.E.  
President  
WDP/mlj  
Attachment 1: Schedule of Services and Fees  
Attachment 1.1: Cost Estimate

**SCHEDULE OF SERVICES AND FEES-ATTACHMENT 1**

**QUALITY ASSURANCE  
CONSTRUCTION MATERIALS TESTING AND INSPECTION SERVICES  
FOR**

**SSA 9 - North Industrial SSA Roadway, Streambank  
Stabilization and Utility Improvements  
Village of Bensenville, IL**

**PREPARED BY  
MIDLAND STANDARD ENGINEERING & TESTING, INC.  
EAST DUNDEE, ILLINOIS**

**MIDLAND STANDARD ENGINEERING & TESTING, INC.**

**BASIS OF RATES**

**SCHEDULE OF SERVICES AND FEES-ATTACHMENT 1**

We propose to provide the necessary Engineering Consultation and Quality Control inspections and testing, using experienced personnel, in accordance with the project specifications and recognized test procedures developed by, IDOT, ASTM, ACI, AASHTO, etc. We can also provide engineering analysis, problem solving and consultation services as requested.

Our services would be provided at the request of your designated representative on a unit rate basis in accordance with the Schedules of Services and Fees.

Engineering Technicians or Field Engineers would be assigned to provide the field services as requested by your Designated Representatives. Engineering liaison, review and supervision will be provided by a Project Engineer.

In addition to the field and laboratory technical staff, we are able to provide full engineering backup services. Our engineering staff will be available to provide consultation and recommendations which may be required when job site problems are experienced.

Our billing philosophy is simple and direct. We account and invoice for all time expended on a project by our personnel for inspections, preparing and reviewing reports, attending meetings, resolving problems or providing services productive to the project.

Our field people are quoted on a time basis, which includes being fully equipped and expendable supplies.

ATTACHMENT 1 (CONT'D)

**FEE SCHEDULE GENERAL INSPECTION AND TESTING**

**CONSTRUCTION TESTING AND INSPECTION SERVICES**

**A. Engineering Technician-Level I/ACI Technician  
*(MATERIAL TESTER 1)***

We will provide the services of an Engineering Technician for a fee of..... \$ 94.00  
per hour. A four (4) hour minimum/ day is applicable

**B. Engineering Technician Level II PCC Technician  
*(MATERIAL TESTER 2)***

We will provide the services of Level II Engineering Technician for a fee of..... \$ 98.00  
per hour. A four (4) hour minimum/ day is applicable

**C. Engineering Technician- Level I BIT Technician  
*(MATERIAL TESTER 1)***

We will provide the services of an Engineering Technician for a fee of..... \$ 94.00  
per hour. A four (4) hour minimum/ day is applicable

**D. Engineering Technician- Level II BIT Technician  
*(MATERIAL TESTER 2)***

We will provide the services of a Level II Engineering Technician for a fee of..... \$ 98.00  
per hour. A four (4) hour minimum/ day is applicable

**E. Engineering Technician- Soils and Backfill  
*(MATERIAL TESTER 2)***

We will provide the services of a Soils Engineering Technician for a fee of..... \$ 98.00  
per hour. A four (4) hour minimum/ day is applicable

## ATTACHMENT 1 (CONT'D)

### F. Engineering Services –All Projects

Engineering Services for inspection, test evaluation, contract administration, laboratory and field supervision, resolution of special problems, preparation of reports, job-site and other job related meetings and consultation will be furnished in accordance with the following schedule of hourly rates:

PW Administrator.....	\$ 75.00
Field Engineer.....	\$ 95.00
Steel Inspector (Level II).....	\$ 90.00
Staff Engineer.....	\$ 90.00
Project Engineer .....	\$ 95.00
Project Manager or Materials Consultant, P.E.....	\$ 110.00
Geotechnical Engineer, P.E.....	\$ 125.00
Principal Engineer, P.E.....	\$ 145.00

### G. Laboratory Services

Our fully equipped laboratory can provide a full range of tests, rates for tests not specifically quoted available on request.

1. Compressive Strength tests of concrete cylinders, including expendable supplies (molds), curing at MSET, (Pick-up additional)	\$ 17.00 ea.
2. Flexural Strength tests of concrete beams, including reusable molds, curing at MSET and disposal, (Pick up additional)	\$ 50.00 ea.
3. Aggregate Gradation	
Dry Sieve Analysis.....	\$ 60.00 ea.
Washed Sieve Analysis.....	\$ 70.00 ea.
Hydrometer & Sieve Analysis.....	\$ 90.00 ea.
4. Atterberg Limits ASTM D4318.....	\$ 80.00 ea.
5. Theoretical Maximum Density ASTM D 2041	\$ 155.00 ea.
6. Asphalt Content by Reflux Extraction	\$ 100.00 ea.
7. Asphalt Content by Reflux Extraction with Gradation	\$ 165.00 ea.
8. Asphalt Content by Ignition Oven	\$ 100.00 ea.
9. Asphalt Content by Ignition Oven with Gradation	\$ 165.00 ea.
10. Bulk Specific Gravity of Gyratory Specimen	
a. (set of two) and air voids.....	\$ 315.00 ea.
11. Laboratory Compaction Characteristics Using Standard Effort ASTM D 698.....	\$ 155.00 ea.
12. Laboratory Compaction Characteristics Using Modified Effort ASTM D 1557.....	\$ 175.00 ea.

## **H. Miscellaneous Services**

Concrete cylinder pick-up trips will be invoiced when cylinders are picked up as a special trip and not returned to laboratory by MSET personnel commuting to jobsite .....\$ 75.00 each

### **NOTES TO FEE SCHEDULE**

1. a. Personnel rates quoted are based on rates quoted above are based on first shift work days, Monday through Friday, and up to 8 hours, per man, per day. Shift differentials are applied to straight time rates as follows:  
First Shift - 6am-2pm, Rates x 1.0  
Second Shift - 2pm-10pm, Rates x 1.10  
Third Shift - 10pm-6am, Rates x 1.25  
Shift rate differentials are determined by the starting time of the inspection shift.  
b. Overtime rates are applicable to all work per man, over 8 hours per day, on Saturdays, Sundays and holidays. Overtime rates are 1.40 times the applicable straight time rate, (after applying the shift differential). An eight (8) hour minimum daily charge applies for second shift, third shift, weekend and holiday work.  
c. An overtime multiplier of 1.5 times the listed rates may be applied for laboratory testing such as concrete strength testing conducted outside of normal business hours, if required on a job to job basis.
2. Personnel rates are billed portal to portal from our East Dundee facilities. For full time assignments we will attempt to assign personnel to report directly to the job site.
3. Invoices will be submitted once a month for services rendered during the prior month.
4. Rates quoted above include 4 copies of reports distributed and mailed in accordance with your instructions. Additional copies will be billed at a rate of \$0.25 per sheet.
5. The presence of our personnel on site will be for the express purpose of observing the work and performing specific tests to document compliance of the work with the applicable specifications. We will not be responsible for job site safety, that duty being properly an obligation of the Contractor, who should be so informed. We will comply fully with the Contractor's safety program.
6. Services and fees not specifically listed above will be quoted upon request.
7. Unit Rates quoted above are applicable until 3/1/13 and are based on our staffing conditions, current as of the date of this proposal.

## North Industrial SSA Roadway, Streambank and Utility Improvements SSA 9 Bensenville, IL

**TYPE:** Resolution      **SUBMITTED BY:** Joe Caracci      **DATE:** 03/04/2013

**DESCRIPTION:** Resolution to approve Final Balancing Change Order No. 1 on the County Line Road Watermain Replacement Project

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input checked="" type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input checked="" type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

**ASSIGNED COMMITTEE:** I & E (unanimous approval)

**DATE:** 2/26/2013

**BACKGROUND:** The County Line Road Water Main Replacement Project (CLRWRP) was a result of numerous breaks over the past couple of years along the stretch of water main between Green Street and Jefferson St. This project was an emergency repair project and was not identified in the FY 2012 budget. Substantial completion on the project was achieved on December 14, 2012 and final completion attained 45 days ahead of schedule on January 14, 2013.

The award of the construction contract to Vian Construction Company was established at the August 28, 2012 Village Board Meeting. At the time of bid award, the Village Board authorized the appropriation of \$296,218.60 of monies. Due to the unforeseen circumstances, field changes were necessary; which, resulted in the addition of more contract quantities as well as an increase in originally established quantities. The increase in quantities brought the final contract value up to \$370,645.94.

The project is now complete and the final contract value is \$370,645.94, which is \$74,427.34 over the original approved contract value.

**KEY ISSUES:** Enclosed herewith is the change order form and Resolution in support of Change Order No. 1 and Final for the CLRWRP. The change order consists of an increase in the contract total to the Vian Construction Company in the amount of \$74,427.34. This change order focuses on thirteen (13) items that were not anticipated at the start of the project or needed to be incorporated in the field. The bulk of the increase was caused due to unknown utility conflicts and contaminated soils.

**ALTERNATIVES:** Discretion of the Village Board

**RECOMMENDATION:** Staff recommends approval of Final Balancing Change Order No. 1

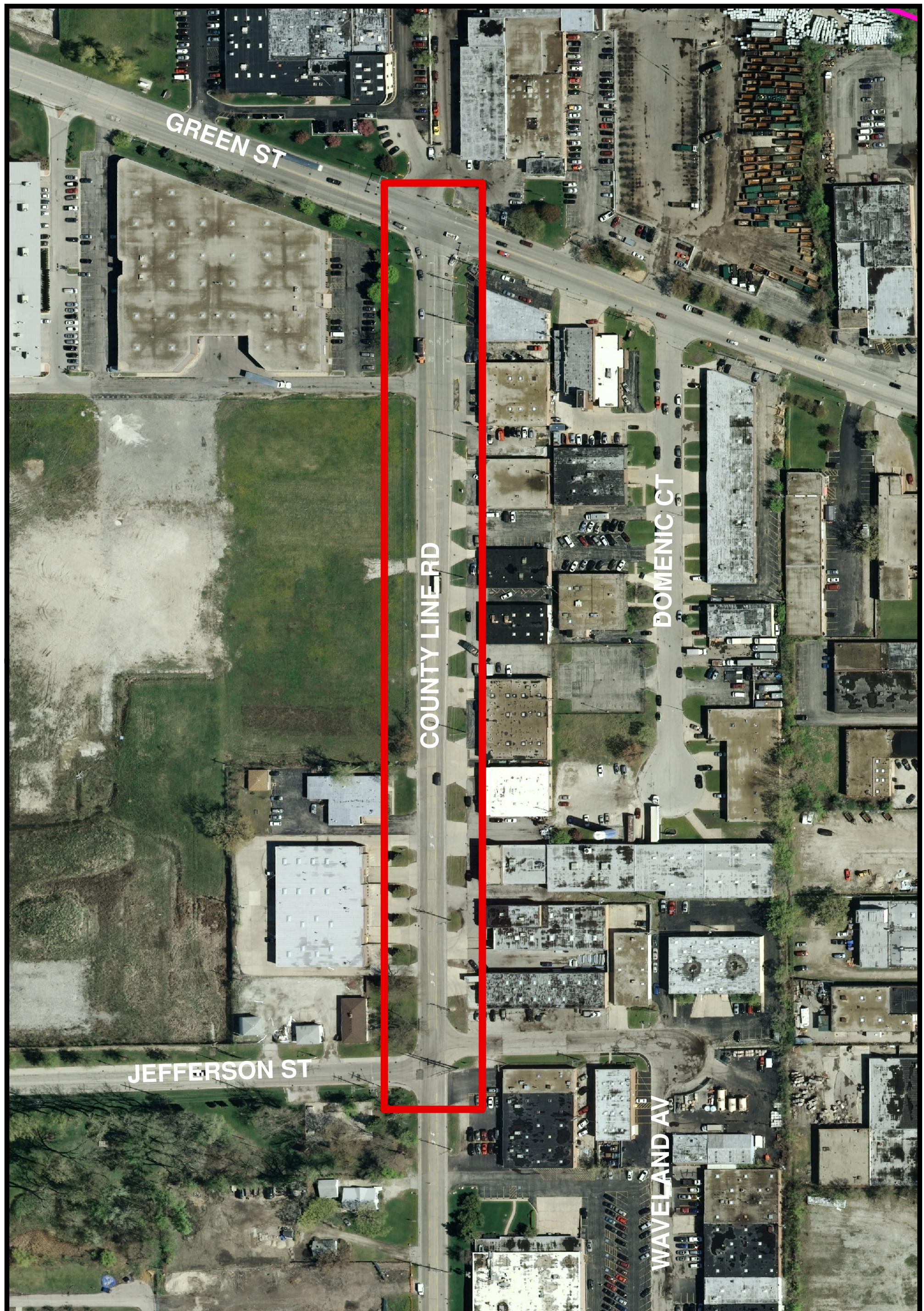
**BUDGET IMPACT:** This is emergency replacement project which was not budgeted for in the CY2012. However, we feel we have sufficient funds available in the water capital fund to cover the construction costs for this project.

**ACTION REQUIRED:** A motion to approve a Resolution authorizing the approval of Final Balancing Change Order No. 1 to Vian Construction Company, Inc. in the amount of \$370,645.94 for the County Line Road Watermain Replacement Project.



# Village of Bensenville

2012 County Line Rd. Water Main Project



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION CONCERNING THE DETERMINATION OF THE BENSENVILLE  
VILLAGE BOARD THAT CHANGE ORDER NUMBER ONE (FINAL) WITH  
VIAN CONSTRUCTION COMPANY, INC.**

**FOR AN INCREASE OF \$74,427.34 IS REQUIRED FOR THE  
COUNTY LINE ROAD WATERMAIN REPLACEMENT PROJECT  
FOR A REVISED AND FINAL CONTRACT COST OF \$370,645.94**

WHEREAS, Chapter 720, Section 5/33-E-9 of the Illinois Compiled Statutes 2002 requires change orders on public contracts involving total cumulative changes of more than Ten Thousand Dollars (\$10,000) in value or a cumulative total of thirty (30) days in time to be made by written determination; and

WHEREAS, it has been determined that it would be beneficial to the Village to revise original contract quantities to match actual as-constructed amounts, to compensate the contractor for additional work performed as directed and approved by the project engineer and Village staff, and to receive credit for the items that weren't used on the project; and

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BENSENVILLE, DUPAGE COUNTY, ILLINOIS, as follows:

**SECTION ONE:** The Corporate Authorities of the Village make the written determination that the circumstances necessitating the change were not within the contemplation of the contract as signed and that this change order is in the best interest of the Village.

**SECTION TWO:** The change order which this determination involves relates to the following contract: County Line Road Water Main Replacement Project, Vian Construction Company, Inc. The nature of Change Order Number One (FINAL) and the amount of change is as follows – the contractor and engineer worked together to make necessary field changes required due to utility conflicts which resulted in increase of the plan quantities. The net change in quantities totaled to an additional compensation for the contractor in the amount of \$74,427.34.

**SECTION THREE:** This Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, \_\_\_\_\_, 2013.

APPROVED:

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Frank Soto  
Village President

ATTEST:

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Susan Janowiak  
Village Clerk

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

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

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



# Village of Bensenville

## Department of Public Works

717 E. Jefferson Street  
Bensenville, IL 60106  
Phone (630) 350-3435 Fax (630) 594-1148

Date: February 18, 2013  
To: Joe Caracci, Director of Public Works  
From: Mehul Patel, Civil Engineer  
Subject: Change Order No. 1 & Final – County Line Road Watermain Replacement Project

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The **County Line Road Watermain Replacement Project (CLRWRP)** was a result of numerous breaks over the past couple of years along the stretch of watermain between Green Street and Jefferson St. This project was an emergency repair project and was not identified in the FY 2012.

Enclosed herewith is the change order form and Resolution in support of Change Order No. 1 and Final for the CLRWRP. The change order consists of an increase in the contract total to the Vian Construction Company in the amount of **\$74,427.34**. This change order focuses on thirteen (13) items that were not anticipated at the start of the project or needed to be incorporated in the field.

The award of the construction contract to Vian Construction Company were established at the August 28, 2012 Village Board Meeting. At the time of bid award, the Village Board authorized the appropriation of \$296,218.60 of monies. Due to the unforeseen circumstances, field changes were necessary; which, resulted in the addition of more contract quantities as well as an increase in originally established quantities. The increase in quantities brought the final contract value up to \$370,645.94.

To best outline the items for inclusion in this change order, the body of this memo will mirror the Change Order Form. Each item on the form will be explained, in detail.

### CHANGE ORDER NO. 1 & Final

**AUP # 1: Stainless Steel Nuts & Bolts and Upsized Casing Pipe (\$5,226.00)** – The specs had identified stainless steel nuts and bolts for the valves and fire hydrant installation, but did not identify the same for the fittings. This was a necessary change because stainless steel nuts and bolts offer a much longer life expectancy and are rust proof unlike cortan nuts and bolts. The watermain protection casing pipe identified in the plans had to be upsized because the outside diameter of the watermain pipe with fittings exceeded the inside diameter of the casing pipe.

**AUP # 2: Install 2-inch water service (\$11,630.00)** – This change was a result of existing field conditions as some of the businesses along County Line Road had a 2-inch existing water service. In order to match the existing service size a field change was necessary to up the pipe size to 2-inch from proposed 1.5-

inch service. There were a total of two 2-inch services, one on the short side and the other on the long side which had to be bored under County Line Road.

**AUP # 3: Jefferson Street Connection (Total cost: \$4,090.18)** – Another change due to the unforeseen existing field conditions underground. In order to avoid conflict with existing gas pipe line and to prevent multiple unnecessary valve shutdown for future watermain breaks, this change was implemented in the field once the underground conditions were exposed.

**AUP # 4: Temporary Asphalt Patches (Total cost: \$5,175.00)** - The connection of proposed watermain to the existing watermain took place in County Line Road. Cook County Highway Department has jurisdiction over this road. As part of their permit review, they had required to install temporary asphalt patches where these connections took place until the final pavement restoration was established.

**AUP#5: Remove & Replace two Catch basins (Total cost: \$5,355.80)** - Two buried storm catch basins were discovered during construction at STA 14+47 and STA 19+14. These catch basins had to be removed and replaced with smaller size catch basins in order to install the watermain in the parkway.

**AUP # 6: Repair unmarked water and sanitary service (Total cost: \$3,628.48)** – An unmarked 2-inch water service and 6-inch sanitary service was discovered in the field while installing the watermain. These services were hooked up to an occupied building and had to be repaired, immediately.

**AUP # 7: Remove and Replace an Inlet and 10 LF of pipe(Total cost: \$2,150.00)** – An existing inlet had to be removed and replaced due to a vertical elevation conflict with the proposed watermain at STA 11+76. Per the Illinois Water and Sewer specs, 5 feet of pipe on either side of the watermain crossings had to be replaced with watermain quality pipe.

**AUP # 8: Relocate Watermain due to utility conflicts (Total cost: \$4,749.12)** – The proposed 12-inch watermain had to be shifted closer to the west ROW due to utility conflicts with existing ComED vault as well as the 2-inch gas service line. Additional time and labor was required to accommodate this change.

**AUP # 9: Remove and Repair existing casing pipe (Total cost: \$1,541.96)** – The existing 6-inch water service at STA 12+00 had to be reconnected with the new watermain. However; the existing 6-inch watermain was installed inside a casing pipe. Additional time was required to properly reestablish the connection.

**AUP # 10: Additional Traffic Control (Total cost: \$1,700.00)** – In order to properly re-establish existing connections, the contractor had to dig in the center lane of County Line Road. While this work was being performed additional traffic control and flaggers were necessary to safely direct the traffic around the construction area.

**AUP # 11: Additional Concrete Patches (Total cost: \$3,350.00)** – The size of the proposed pavement patches had to be increased due to additional work involved for re-connections under County Line Road. This work also consisted of restoring some of the pavement patches from previous watermain breaks.

**AUP # 12: Concrete Barrier Curb (Total cost: \$3,520.00)** – To properly install the proposed watermain as shown in the parkway, existing barrier curb along some of the businesses had to be removed and replaced.

**Item # 48: Additional Hauling Surcharge, Special Waste (Total Cost: \$23,640)** – Per the new IEPA regulations, all the construction debris to be hauled off of any construction site must be tested for Maximum Allowable Concentration (MAC) limits set forth by the IEPA. A nominal contract quantity was included in this project to establish pricing for such waste. During the geotechnical investigation of the site, the north 300 feet of this project consisted of soils that exceed the allowable MAC limits for Chromium; therefore, any spoils generated from this area must be hauled off to a special waste site. During construction, a concrete ComED vault of 4'x4' was discovered all along the proposed watermain. Unfortunately, going over the top of this duct wouldn't have provided the desired 5.5' feet watermain depth. Hence, the contractor had to install the proposed watermain underneath this vault on the north end of the site in order to provide proper depth and clearance. Since the watermain was installed 8'-9' below ground in this location a lot more special waste debris was generated than originally anticipated.

### **CONCLUSION**

The thirteen items included in this Changer Order No. 1 and Final total to additional costs of \$74,427.34. The final balancing contract amount for this project is \$370,645.94. The final contract value is below the original engineer's estimate of \$391,624.41 and originally anticipated project cost of \$400,000.

County Line Road Watermain Replacement  
 Green Street to Jefferson Street  
 Contract No. PW-2012-12

QUANTITY TRACKING SHEET				Vian Construction		Remaining Quantities	Constructed Pay Request #1		Constructed Pay Request #2		Quantity Balancing Change Order	
Item #	Description	Unit	Quantity	Unit Price	Extended Cost		Quantity	Cost	Quantity	Cost	Quantity	Cost
<b>Watermain and Appurtenances</b>												
1	6" DIP WM (CLASS 52)	LF	28	\$59.00	\$1,652.00	<b>-30.00</b>	58.00	\$3,422.00	0.00	\$0.00	-30.00	(\$1,770.00)
2	12" PVC WM (AWWA C-900)	LF	1,200	\$67.00	\$80,400.00	<b>23.00</b>	1,177.00	\$78,859.00	0.00	\$0.00	23.00	\$1,541.00
3	Trench Backfill	CU YD	270	\$26.00	\$7,020.00	<b>-183.00</b>	270.00	\$7,020.00	183.00	\$4,758.00	-183.00	(\$4,758.00)
4	Fire Hydrant and Aux Valve & Box Assembly Complete	EA	3	\$3,700.00	\$11,100.00	<b>-1.00</b>	4.00	\$14,800.00	0.00	\$0.00	-1.00	(\$3,700.00)
5	Remove Fire Hydrant and Aux Valve & Box and Salvage	EA	3	\$200.00	\$600.00	<b>3.00</b>	0.00	\$0.00	0.00	\$0.00	3.00	\$600.00
6	Water Service Line 1-1/2"	LF	234	\$55.00	\$12,870.00	<b>204.00</b>	30.00	\$1,650.00	0.00	\$0.00	204.00	\$11,220.00
7	Water Service Line 1-1/2" (Bored)	LF	400	\$50.00	\$20,000.00	<b>-142.00</b>	542.00	\$27,100.00	0.00	\$0.00	-142.00	(\$7,100.00)
8	1-1/2" Corporation Stop w/ Strap Saddle	EA	9	\$900.00	\$8,100.00	<b>-2.00</b>	11.00	\$9,900.00	0.00	\$0.00	-2.00	(\$1,800.00)
9	12" Gate Valve and Vault (5' Dia)	EA	3	\$5,000.00	\$15,000.00	<b>0.00</b>	3.00	\$15,000.00	0.00	\$0.00	0.00	\$0.00
10	6" Gate Valve and Vault (5' Dia)	EA	2	\$3,490.00	\$6,980.00	<b>0.00</b>	2.00	\$6,980.00	0.00	\$0.00	0.00	\$0.00
11	Remove Existing B-Box and Cap Service	EA	1	\$400.00	\$400.00	<b>1.00</b>	0.00	\$0.00	0.00	\$0.00	1.00	\$400.00
12	1-1/2" B-Box	EA	9	\$240.00	\$2,160.00	<b>-2.00</b>	11.00	\$2,640.00	0.00	\$0.00	-2.00	(\$480.00)
13	Watermain Testing and Chlorination	LSUM	1	\$2,000.00	\$2,000.00	<b>0.00</b>	1.00	\$2,000.00	0.00	\$0.00	0.00	\$0.00
14	Remove Existing Valve Vault & Frame and Lid	EA	3	\$400.00	\$1,200.00	<b>0.00</b>	3.00	\$1,200.00	0.00	\$0.00	0.00	\$0.00
15	Remove Existing Valve Vault Frame and Lid	EA	1	\$400.00	\$400.00	<b>0.00</b>	1.00	\$400.00	0.00	\$0.00	0.00	\$0.00
16	Remove Existing 10" Watermain	LF	73	\$15.00	\$1,095.00	<b>58.00</b>	15.00	\$225.00	0.00	\$0.00	58.00	\$870.00
17	Remove Existing 12" Watermain	LF	10	\$15.00	\$150.00	<b>10.00</b>	0.00	\$0.00	0.00	\$0.00	10.00	\$150.00
18	Abandon and Fill Existing 10" Watermain	CU YD	34	\$280.00	\$9,520.00	<b>0.00</b>	34.00	\$9,520.00	0.00	\$0.00	0.00	\$0.00

QUANTITY TRACKING SHEET				Vian Construction		Remaining Quantities	Constructed Pay Request #1		Constructed Pay Request #2		Quantity Balancing Change Order	
Item #	Description	Unit	Quantity	Unit Price	Extended Cost		Quantity	Cost	Quantity	Cost	Quantity	Cost
<b>Bends, Fittings and Connections</b>												
19	12"x45° Bend (D.I.)	EA	15	\$ 600.00	\$9,000.00	<b>7.00</b>	8.00	\$4,800.00	0.00	\$0.00	7.00	\$4,200.00
20	12"x22 1/2° Bend (D.I.)	EA	6	\$ 520.00	\$3,120.00	<b>5.00</b>	1.00	\$520.00	0.00	\$0.00	5.00	\$2,600.00
21	12"x11 1/4° Bend (D.I.)	EA	2	\$ 520.00	\$1,040.00	<b>2.00</b>	0.00	\$0.00	0.00	\$0.00	2.00	\$1,040.00
22	6"x11 1/4° Bend (D.I.)	EA	1	\$ 400.00	\$400.00	<b>1.00</b>	0.00	\$0.00	0.00	\$0.00	1.00	\$400.00
23	Miscellaneous Fittings	LSUM	1	\$ 2,000.00	\$2,000.00	<b>0.00</b>	1.00	\$2,000.00	0.00	\$0.00	0.00	\$0.00
24	12" Non-Pressure Connection	EA	2	\$ 4,870.00	\$9,740.00	<b>0.00</b>	2.00	\$9,740.00	0.00	\$0.00	0.00	\$0.00
25	6" Non-Pressure Connection	EA	2	\$ 3,800.00	\$7,600.00	<b>0.00</b>	2.00	\$7,600.00	0.00	\$0.00	0.00	\$0.00
26	12"x12"x12" Tee (D.i.)	EA	1	\$ 1,100.00	\$1,100.00	<b>1.00</b>	0.00	\$0.00	0.00	\$0.00	1.00	\$1,100.00
27	12"x12"x6" Tee (D.i.)	EA	5	\$ 800.00	\$4,000.00	<b>-1.00</b>	6.00	\$4,800.00	0.00	\$0.00	-1.00	(\$800.00)
28	10" Watermain Plug	EA	6	\$300.00	\$1,800.00	<b>4.00</b>	1.00	\$300.00	1.00	\$300.00	4.00	\$1,200.00
29	Temporary Plug for Watermain Testing	EA	2	\$1,600.00	\$3,200.00	<b>2.00</b>	0.00	\$0.00	0.00	\$0.00	2.00	\$3,200.00
<b>Watermain Protection</b>												
30	Watermain Quality Casing 16"	LF	56	\$60.00	\$3,360.00	<b>-64.00</b>	120.00	\$7,200.00	0.00	\$0.00	-64.00	(\$3,840.00)
31	Watermain Quality Casing 10"	LF	14	\$55.00	\$770.00	<b>14.00</b>	0.00	\$0.00	0.00	\$0.00	14.00	\$770.00
<b>Restoration</b>												
32	Furnish and Place Topsoil 4"	Sq YD	1,830	\$4.00	\$7,320.00	<b>1,365.40</b>	0.00	\$0.00	464.60	\$1,858.40	1,365.40	\$5,461.60
33	Salt Tolerant Sod	SQ YD	1,830	\$3.00	\$5,490.00	<b>-401.20</b>	0.00	\$0.00	2,231.20	\$6,693.60	-401.20	(\$1,203.60)
34	Fertilizer	Pound	68	\$1.70	\$115.60	<b>68.00</b>	0.00	\$0.00	0.00	\$0.00	68.00	\$115.60
35	Class B Patch, 12" Method I, (High Early Strength Concrete)	SQ YD	124	\$110.00	\$13,640.00	<b>-154.10</b>	47.00	\$5,170.00	231.10	\$25,421.00	-154.10	(\$16,951.00)
36	Class D Patch 12"	SQ YD	19	\$120.00	\$2,280.00	<b>19.00</b>	0.00	\$0.00	0.00	\$0.00	19.00	\$2,280.00
37	Remove and Replacement of Concrete Driveway Pavement	SQ YD	184	\$57.00	\$10,488.00	<b>42.80</b>	0.00	\$0.00	141.20	\$8,048.40	42.80	\$2,439.60
38	Remove and Replacement of Bituminous Driveway Pavement	SQ YD	131	\$40.00	\$5,240.00	<b>6.40</b>	0.00	\$0.00	124.60	\$4,984.00	6.40	\$256.00
39	Driveway Pavement Removal	SQ YD	54	\$9.00	\$486.00	<b>-17.00</b>	71.00	\$639.00	0.00	\$0.00	-17.00	(\$153.00)
40	Remove & Replace Concrete Curb and Gutter	LF	75	\$32.00	\$2,400.00	<b>-38.00</b>	0.00	\$0.00	113.00	\$3,616.00	-38.00	(\$1,216.00)
41	Remove & Reset Street Sign	EA	5	\$100.00	\$500.00	<b>1.00</b>	1.00	\$100.00	3.00	\$300.00	1.00	\$100.00

QUANTITY TRACKING SHEET				Vian Construction		Remaining Quantities	Constructed Pay Request #1		Constructed Pay Request #2		Quantity Balancing Change Order	
Item #	Description	Unit	Quantity	Unit Price	Extended Cost		Quantity	Cost	Quantity	Cost	Quantity	Cost
<b>Miscellaneous</b>												
42	Mobilization	LSUN	1	\$ 2,000.00	\$2,000.00	0.00	1.00	\$2,000.00	0.00	\$0.00	0.00	\$0.00
43	Traffic Control	LSUM	1	\$ 7,200.00	\$7,200.00	0.00	0.80	\$5,760.00	0.20	\$1,440.00	0.00	\$0.00
44	Changeable Message Sign	CAL MO	6	\$200.00	\$1,200.00	5.00	1.00	\$200.00	0.00	\$0.00	5.00	\$1,000.00
45	Temporary Pavement Marking Tape, Type 3, 24"	LF	43	\$59.00	\$2,537.00	43.00	0.00	\$0.00	0.00	\$0.00	43.00	\$2,537.00
46	Exploration Trenching	LSUM	1	\$1,000.00	\$1,000.00	0.00	1.00	\$1,000.00	0.00	\$0.00	0.00	\$0.00
47	Inlet Filters	EA	9	\$180.00	\$1,620.00	9.00	0.00	\$0.00	0.00	\$0.00	9.00	\$1,620.00
48	Additional Hauling Surcharge, Special Waste	Load	5	\$985.00	\$4,925.00	-24.00	5.00	\$4,925.00	24.00	\$23,640.00	-24.00	(\$23,640.00)
49												
50												
					\$296,218.60							
<b>Change Order</b>												
51	AUP NO.1	LSUM	1	\$5,226.00	\$5,226.00	0.46	0.56	\$2,856.00	0.46	\$2,370.00		
52	AUP NO. 2	LSUM	1	\$11,630.00	\$11,630.00	0.00	1.00	\$11,630.00	0.00	\$0.00		
53	AUP NO. 3	LSUM	1	\$4,090.18	\$4,090.18	0.00	0.00	\$0.00	1.00	\$4,090.18		
54	AUP NO. 4	LSUM	1	\$5,175.00	\$5,175.00	0.00	0.00	\$0.00	1.00	\$5,175.00		
55	AUP NO. 5	LSUM	1	\$5,355.80	\$5,355.80	0.00	0.00	\$0.00	1.00	\$5,355.80		
56	AUP NO. 6	LSUM	1	\$3,628.48	\$3,628.48	0.00	0.00	\$0.00	1.00	\$3,628.48		
57	AUP NO. 7	LSUM	1	\$2,150.00	\$2,150.00	0.00	0.00	\$0.00	1.00	\$2,150.00		
58	AUP NO. 8	LSUM	1	\$4,749.12	\$4,749.12	0.00	0.00	\$0.00	1.00	\$4,749.12		
64	AUP NO. 9	LSUM	1	\$1,541.96	\$1,541.96	0.00	0.00	\$0.00	1.00	\$1,541.96		
65	AUP NO. 10	LSUM	1	\$1,700.00	\$1,700.00	0.00	0.00	\$0.00	1.00	\$1,700.00		
66	AUP NO. 11	LSUM	1	\$3,350.00	\$3,350.00	0.00	0.00	\$0.00	1.00	\$3,350.00		
67	AUP NO. 12	LSUM	1	\$3,520.00	\$3,520.00	0.00	0.00	\$0.00	1.00	\$3,520.00		
68	AUP NO. 13 (FINAL BALANCING)	LSUM	1	\$22,310.80	\$22,310.80	0.00	0.00	\$0.00	1.00	\$22,310.80		
Total				\$370,645.94				251,956.00		118,689.94		(\$22,310.80)

Original Contract Price	\$296,218.60
Increase in Quantities	\$74,427.34
Revised Contract Price	\$370,645.94
Previous Payments	\$226,760.40
Amount Due	\$143,885.54
Retained Amount	\$0.00

**REQUEST FOR AUTHORIZATION OF CHANGES  
CHANGE ORDER NO. 1 (FINAL)**



Project Name: County Line Road Water Main Replacement

To: Village of Bensenville  
717 E. Jefferson Street  
Bensenville, IL 60106

Contractor: Vian Construction  
1041 Martha Street  
Elk Grove Village, IL 60007

Date: 3/4/2013

The following change from the Plans in the construction of the above designated project is recommended:

ITEM	DESCRIPTION	ADDITIONS	DEDUCTIONS
AUP #1	Stainless Steel Nuts & Bolts and Upsized Casing Pipe	\$5,226.00	
AUP #2	Install 2-inch water service	\$11,630.00	
AUP #3	Jefferson Street Connection	\$4,090.18	
AUP #4	Temporary Asphalt Patches	\$5,175.00	
AUP #5	Remove & Replace two Catch basins	\$5,335.80	
AUP #6	Repair unmarked water and sanitary service	\$3,628.48	
AUP #7	Remove and Replace an Inlet and 10 LF of pipe	\$2,150.00	
AUP #8	Relocate Watermain due to utility conflicts	\$4,749.12	
AUP #9	Remove and Repair existing casing pipe	\$1,541.96	
AUP #10	Additional Traffic Control	\$1,700.00	
AUP #11	Additional Concrete Patches	\$3,350.00	
AUP #12	Concrete Barrier Curb	\$3,520.00	
AUP #13	Balancing of Bid Items	\$22,310.80	

Amount of this Order:	<u>\$74,407.34</u>
Amount of Previous Orders:	<u>\$0.00</u>
Original Contract Amount:	<u>\$296,218.60</u>
Original Contract Amount and Orders:	<u>\$370,625.94</u>

The work covered by this Order shall be performed under the same terms and conditions as that included in the Original Contract.

Requested by:	Steve Cieslica, Trotter & Associates		
Reviewed by:	Mehul Patel, Civil Engineer, VOB		
Recommended by:	Joe Caracci, Director of Public Works, VOB		
Approved by:	Mike Cassady, Village Manager, VOB		
Accepted by:	Vince Rendina, Vian Construction		

TYPE: Resolution SUBMITTED BY: Joe Caracci DATE: 03/04/2013

DESCRIPTION: Resolution authorizing the Execution of a Contract with HD Water Works for the Water Meter Replacement Program in the amount of \$2,303,651.70

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	Financially Sound Village	<input checked="" type="checkbox"/>	Enrich the lives of Residents
<input checked="" type="checkbox"/>	Quality Customer Oriented Services	<input type="checkbox"/>	Major Business/Corporate Center
<input type="checkbox"/>	Safe and Beautiful Village	<input type="checkbox"/>	Vibrant Major Corridors

**COMMITTEE ACTION: I&E (unanimous approval)**

**DATE: 02/26/2013**

**BACKGROUND:** The water distribution system in the Village of Bensenville has been experiencing an increased amount of water loss over the past several years. Approximately 23% of the water that is being purchased from the DuPage Water Commission is not being accounted for and is therefore lost revenue for the Village. There are a number of issues that can contribute to water loss in a system, however a major source of this loss is due to the age and accuracy of the water meters currently in the system. The majority of water meters in Bensenville were replaced over twenty years ago in the early 1990s. Since the expected useful life of water meters is twenty years, now is the appropriate time to replace meters Village-wide. Water meter read accuracy is not only important for financial reasons it is also necessary for the Village to meet the accountable water obligations established by the Illinois Department of Natural Resources (IDNR) and the Lake Michigan allocation.

**KEY ISSUES:** Responses for a recent Request for Proposal (RFP) for water meter replacement were received from several vendors. Submittals were received from four suppliers. Each supplier offered an upgraded system capable of remotely reading meters at least once per day for all water customers (our current system is setup to obtain meter reads only once per month). An enhanced system that has customer service capabilities such as leak detection, email alerts, online usage reports, and tamper resistance were all desired components of the new water meter read system. Each RFP submittal for water meter replacement was scored based on the following criteria: Meters (30%), Automatic Meter Read System (30%), Installation (10%), and Cost (30%). Evaluation Scoring Results (1000 points possible):

Supplier	Evaluation Score	Base Proposal Cost
HD Supply Waterworks	792.21	\$2,117,430
Ferguson Waterworks	701.86	\$2,166,794
Mueller Systems	677.97	\$2,024,574
Midwest Meter A	636.82	\$2,361,492
Midwest Meter B	630.76	\$2,021,486

HD Supply Waterworks obtained the highest score for a number of reasons including best meter accuracy, most desirable infrastructure, and its own licensed frequency for reads. HD Supply also was the only manufacturer that offered an upgrade to compound meters for our medium sized (1 ½" and 2" meters) accounts (+\$240,065). Also available is a "cloud based" data management system (-\$20,900) and a credit for previously installed meters (-\$32,943.30). The final recommended contract price is \$2,303,651.70. HD Supply has fully implemented this complete Flex Net system in Lombard, Morton Grove, North Riverside, Belvidere, and Joliet. They are in the process of implementation in LaGrange, Wheeling and Des Plaines. References have all come back very positive.

**RECOMMENDATION:** Staff recommends approval of the contract with HD Supply. This recommendation does not select the lowest cost proposal. Staff feels that based on the evaluation criteria, there were more important factors involved than price alone (accuracy of meters, number and style of repeater infrastructure, use of a licensed radio frequency, long term maintenance cost, and cost when comparing like systems).

**ALTERNATIVES:** Discretion of the Village Board

**BUDGET IMPACT:** Funding in the amount of \$2,500,000 for the project has been secured in the CY2013 Capital Budget (Account No. 51080860 596000)

**ACTION REQUIRED:** Approval of Resolution to Authorizing the Execution of Contract with HD Water Works, Inc. for the Water Meter Replacement Program in the amount of \$2,303,651.70

**RESOLUTION NO.**

**AUTHORIZING THE EXECUTION OF A CONTRACT WITH  
HD SUPPLY WATERWORKS, LTD. FOR THE WATER METER  
REPLACEMENT PROGRAM IN THE AMOUNT OF \$2,303,651.70**

WHEREAS the Village of Bensenville owns and operates a water distribution system to provide Lake Michigan water from the DuPage Water Commission (DWC); and

WHEREAS the Village has a responsibility to the Illinois Department of Natural Resources (IDR) to meet our allowable Lake Michigan Allocation; and

WHEREAS IDR allows an allowable water loss of 8%; and

WHEREAS the Village of Bensenville has exceeded that allowable water loss percentage for the last eight (8) years; and

WHEREAS water loss also impacts our financial stability of our Utility Enterprise Fund; and

WHEREAS the Village has engaged in a water loss reduction program over the past two years; and

WHEREAS the Village water meters were installed in the early 1990's and have exceeded their useful life; and

WHEREAS the Village has identified water meter replacement as a top priority to reduce water loss, and

WHEREAS the Village requested proposals for a complete water meter replacement program that will include a new Automatic Meter Read (AMR) System to improve customer service; and

WHEREAS the Village has budgeted \$2,500,000 in the CY13 budget for the Meter Replacement Program; and

WHEREAS HD Supply Waterworks, LTD. of Carol Stream, Illinois submitted the most qualifying proposal.

NOW THEREFORE BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

THAT the Village Board authorizes the Village Manager to execute the necessary documents to HD Supply Waterworks, Ltd. of Carol Stream, IL for the Meter Replacement Program in the amount of \$2,303,651.70.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, on this \_\_\_\_\_ day \_\_\_\_\_, 2013

APPROVED:

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Frank Soto  
Village President

ATTEST:

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Susan Janowiak  
Village Clerk

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

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

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



# Village of Bensenville

## Department of Public Works

717 E. Jefferson Street  
Bensenville, IL 60106  
Phone (630) 350-3435 Fax (630) 594-1148

### MEMORANDUM

Date: February 20, 2013

To: Mike Cassady, Village Manager

From: Joe Caracci, Director of Public Works  
Richard N. Radde, Utility Supervisor

Subject: **Water Meter Change-Out Program CP# 13.2.01**

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In January of this year, Public Works staff prepared an RFP for a Water Meter Change out Program. An advertisement was placed in the Daily Herald which was published on January 29, 2013. Public Works staff also submitted the RFP electronically to four vendors. A pre-proposal meeting was held on February 1<sup>st</sup> at 10:00am, which several vendors attended. An addendum was created to clarify questions which were raised during the pre-proposal meeting, which were then submitted to all in attendance. The RFP's were due on February 15, 2013 by 10:00am, and the following vendors submitted RFP's: HD Supply Waterworks, Ferguson Waterworks, Mueller Systems and Midwest Meter, Inc. (2 proposals submitted).

### BACKGROUND

During the early 1990's, the Village completed a complete Meter-Change out Program which consisted of replacing all water meters and installing inbound telephone readers (the newest technology at the time). This involved a software program making a "call in" to every customer's meter to get the reading. Shortly after, it was determined that this technology did not work as well as planned. Due to the complications with this system, the Village elected to try outbound telephone technology. This software program consisted of the actual meter unit calling the readings into the Village, again with the same outcome. Telephone read technology no longer exists, because of the complications manufactures endured with phone companies and customers using strictly cellular phone devices.

In 2007, the Public Works Department presented to the Village Board a complete Water Meter Change-out Program. The proposed program included the complete installation of new meters and the installation the newest technology of radio reads on the meters.

The Village Board only approved the installation of the Radio Read component of the system. This Drive by Radio Read system is our current method of collecting the meter data.

As such, the current water meters in our system are 20-22 years old.

## **KEY ISSUES**

1. The majority of the water meters in our system range in age from 20 to 22 years old. The industry standard (AWWA) for the life expectancy of a water meters is roughly 20 years.
2. Many water meters have been repaired or replaced over the years because of inaccuracy or failure.
3. Numerous water meters have been tested for accuracy and the test results support the conclusion that many meters are not operating within acceptable accuracy standards and that substantial benefits will result with replacement meters.
4. Based on IDNR's calculation, the Village's unaccounted for water exceeds current regulations.
5. Customer Service improvements have made tremendous advancements within water meter systems. They include receiving hourly readings, alerts for leak detection and tampering.
6. Inaccurate meters result in higher water rates and potentially an inequitable distribution of water fund costs between those customers with accurate meters and those with inaccurate meters.

As water meters age, their accuracy decreases as the moving parts inside of the meters become worn. This decrease in accuracy has a direct, negative impact of the Village's water accountability because a worn meter will typically under-measure the water flowing through it, and thus the customer is under-billed for the water that the customer is using. Therefore, water meters are routinely replaced at the end of their useful life, which is typically around 20 years for most meters in this area.

As previously mentioned, water meters lose accuracy as the moving parts inside them become worn. Water "slips" by the worn mechanical devices within the meter and some passing water is not recorded. In some instances meters stop working altogether resulting in a "zero" read for usage. This usually results in the meter being replaced. However, most meters lose accuracy for some time before they stop reading altogether.

For purposes of this report, "unaccounted for water" is defined as water purchased by the Village but not billed to customers because of leaks, inaccurate metering, and other

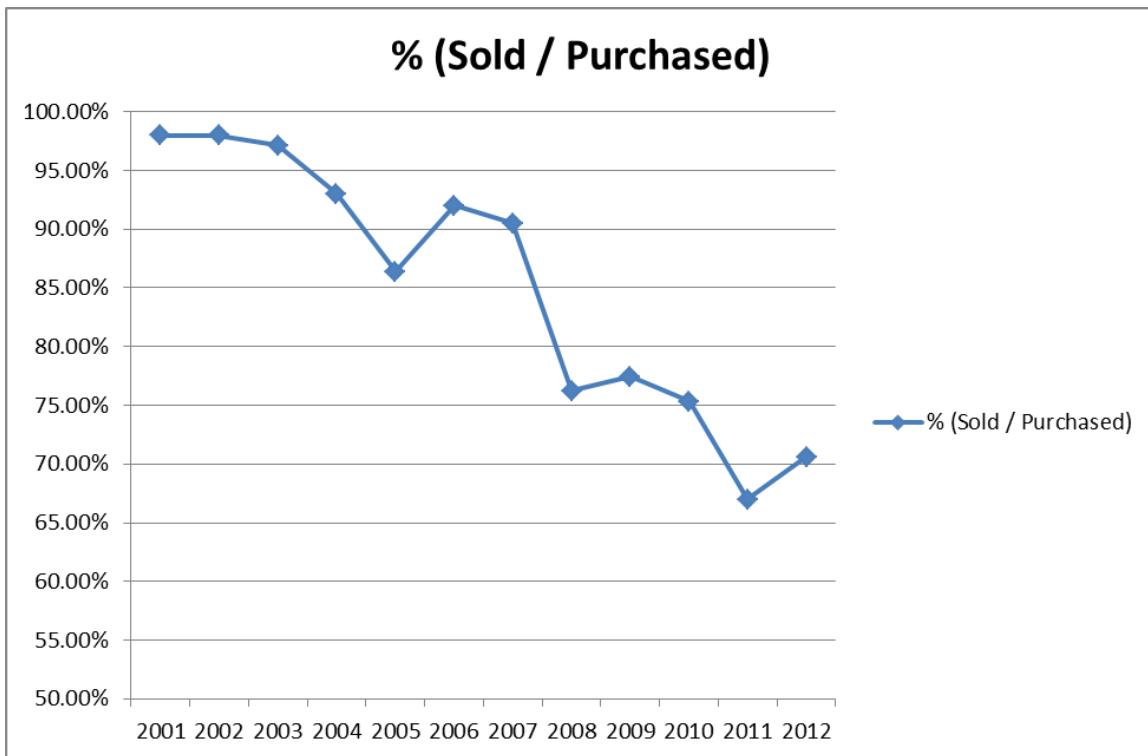
kinds of losses. Unaccounted for water is calculated as the difference in gallons between the amount of water received at the Du Page Water Commission Meter at Church Road Station and the total amount of water delivered to customers as recorded by the individual water meters. “Unaccounted for water” can be expressed as a percentage of overall loss.

In 2012, the total unaccounted for water—that is, the loss of water between the Du Page Water Commission meter (736,400,000 gallons) and the customer water meters (546,965,000 gallons)—was approximately 189 million gallons (resulting in a \$628,924.20 loss). Unaccounted for water can occur from different sources. The following is a list of the major sources of unaccounted for water.

1. Inaccurate metering at customer meters
2. Leaky joints in water mains
3. Water main breaks
4. Annual hydrant flushing
5. Firefighting and training
6. Sewer cleaning
7. Unauthorized hydrant use

The Village has been actively working toward identifying water loss. We have made great strides toward tightening up our distribution system with leak detection, fire hydrant locks, valve exercising, and leak repairs. We have also focused on the meter side of our system. As part of our initiatives, 120 residential meters that were experiencing abnormal readings or trends were replaced as part of a pilot meter replacement program. In the first three months alone, these accounts saw over an 78.65% increase in consumption.

As previously mentioned in Key Issue number #4, the Village has exceeded the Illinois Department of natural Resources unaccounted for water loss for some time now. Currently we are at 23.17%. IDNR only allows an 8% unaccountable water loss. If at any time this percentage is exceeded, measures need to be taken to reduce our water loss and detailed corrective actions need to be addressed when submitting our results to the IDNR. Some of the corrective actions that have been expressed in the past include water main leak detection, large meter testing, tracking in-house water usage, installing hydrant locks, replacement of aging water infrastructure, and rapid repairs to the system. One noticeable change on the IDNR form has been a decrease in the amount of water billing, which is believed to be due to the accuracy of the water meters. The following graphic shows our percentage of water billed versus pumped.



## REQUEST FOR PROPOSALS

During the summer of 2012, Public Works staff invited two vendors to meet with us to discuss current technologies, meter improvements, hardware and software applications. During these discussions, Public Works staff felt so confident in the need for a change-out program that it was included in this year's budget. We have \$2,500,000 budgeted in the 2013 Capital (Water) budget (Account No. 51080860 596000).

Public Works staff created an RFP that included certain components of a water meter change-out program that will be vital to assure the right system for Bensenville now and into the future. They include meter type, meter accuracy, fixed-base radio-read system including hardware and software, installation and cost. The evaluation procedure was forwarded to the Village Board prior to issuance of the RFP so that they could be informed of our intent and evaluation structure. We graded each proposal as follows:

Meters	30%
Software/Hardware	30%
Cost	30%
Installation	10%

The grading was weighted with a maximum score of 1000 points and is shown in Attachment A. A complete breakdown of costs is included in Attachment B. After

reviewing and grading each proposal, the following is the breakdown of the scoring with the base costs of each vendor's proposed system:

Supplier	Evaluation Score	Base Proposal Cost	Rank
HD Supply Waterworks - (Sensus)	792.21	\$2,117,430	1
Ferguson Waterworks - (Neptune)	701.86	\$2,166,794	2
Mueller Systems - (Mueller)	677.97	\$2,024,574	3
Midwest Meter A - (Badger)	636.82	\$2,361,492	4
Midwest Meter B - (Badger)	630.76	\$2,021,486	5

In addition to the base costs requested from the submitting vendors, we also requested each vendor to supply in their RFP an additional cost for the installation of compound water meters in the 1 ½" and 2" size. When the size of the water meters increase in size to match the incoming water service line size, the meter can rapidly decrease its accuracy on "low flow" conditions. Compound meters can capture very low flows with great accuracy and allow the meter to be accurate in high flow conditions also. Recent technology and meter improvements have allowed certain meter manufacturers to build a meter capable of achieving the accuracies of compound meters in 1 ½" and 2" sizes. If a toilet in a building starts to leak, compound meters will pick these leaks up and record the usage. This is a very important issue because most culprits of high water bills are from toilet leaks in a building, and we need to be able to capture these leaks otherwise it is water loss.

The other major component of the meter replacement program is the installation of a new software package that will provide the Village with a state of the art customer service tool. Great advancements have been made on the Automatic Meter Read (AMR) software packages. Most notably is the ability to alert the Village of unusual activity. This can include tampering, reverse flow, malfunction, zero consumption alerts, unusual consumption alerts, and Village-defined alerts. All these added features will allow the Village to interact with our end users (our customers) in a much more advanced, accurate, and proactive manner.

Each applicant provided a software package that is capable of performing many of these tasks. The ability to read meters automatically and collect data for hourly consumption will certainly help the Village identify how our customers are consuming water. This data will assist the Village in identifying leaks in customer's homes and businesses, allow the Village to monitor trends in consumption (sprinkling, day/night consumption, etc.), and ultimately allow our customers the ability to monitor their consumption online (future).

## RECOMMENDATION

After careful consideration and review of all the RFP's submitted, staff recommends executing a contract with HD Supply Waterworks of Carol Stream, IL for the Village Water Meter Replacement Program. HD Supply Waterworks is the local regional distributor of Sensus Water Meter Products. We feel that Sensus has an edge over the other vendor's submittals for the following reasons:

1. As can be deduced from the evaluation summary sheet, the Sensus meters scored higher than the competition when it came to accuracy. Our goal as a Village should be to capture as much consumption as possible. Sensus meters provide this solution. Sensus was the only manufacturer to provide compound meters for both 1 ½" and 2" meters. This is a very enticing option that would help the Village capture low flow consumption on many of our medium sized customers and those customers that supply water to multi-unit buildings. It is our opinion that compound meters, although more expensive, will pay for themselves within the 20 year life cycle of the meter. The cost of this upgrade is \$240,065. **Therefore, it is our recommendation to take advantage of this technology and upgrade to the compound meter for our medium sized customers.**
2. Another area that separated Sensus from the competition was the AMR Infrastructure and licensing. Each vendor conducted a propagation study that detailed how many collector antennas' they would need to install within the Village boundaries to capture every meter read. Sensus was the only manufacturer that is able to read the entire village's water meters with only one antenna. By having one antenna, future maintenance costs will be substantially less. Sensus also has a dedicated FCC license that operates in the 900 MHz range. This will insure that only our equipment can operate on that specific channel and no one else. We feel that having this type of dedicated frequency will ensure the safety of others because of our close proximity O'Hare.
3. The Sensus meter / AMR system has become the system of choice for many of our neighboring communities in recent years. As Sensus continues to upgrade their software package to include new user defines options, they continue to install more and more complete systems in the Midwest. They have over 160 municipalities and utilities in the Chicagoland area alone that utilize their meters and have dozens of full AMR point to point (Flex-Net) systems in operation.
4. Three of the four manufacturers offer a cloud based hosting option for the AMR. This technology would house our data at a remote site and be managed by the manufacturer. This option is preferred as it will eliminate the need to replace

expensive servers, maintenance, and IT Support costs above and beyond the cost of the program. It also provides us with redundancy of data storage off site. **Therefore, it is our recommendation to take advantage of this technology and upgrade (which results in a initial cost reduction) to the “cloud based” option.**

- Finally, over the past year and half, we have installed 160 meters (residential and commercial) from HD Supply while we conducted PILOT programs to determine accuracy differences. Only radio units would need to be installed on these 160 meters which will incur a savings of \$32,943.30.

Below is the final summary of the costs associated with our recommendation:

HD Supply Waterworks				
Meters				
Size	Style	Quantity	Unit Price	Total Cost
5/8"	Residential	4020	\$348.00	\$1,398,960.00
1"	Residential	315	\$398.00	\$125,370.00
1 1/2"	Compound	355	\$1,265.00	\$449,075.00
2"	Compound	129	\$1,385.00	\$178,665.00
3"	Compound	38	\$1,930.00	\$73,340.00
4"	Compound	11	\$2,945.00	\$32,395.00
6"	Compound	2	\$4,995.00	\$9,990.00
<b>SUB TOTAL - Meter Costs</b>				<b>\$2,267,795.00</b>
AMR / Infrastructure				
AMR Infrastructure				\$85,200.00
Handheld Reader				\$4,500.00
Cloud based hosting				-\$40,000.00
Annual Maint Fee				\$19,100.00
<b>SUB TOTAL - AMR / Infrastructure</b>				<b>\$68,800.00</b>
Credits				
Pilot Program Credits				-\$32,943.30
<b>SUB TOTAL - Credits</b>				<b>-\$32,943.30</b>
<b>Grand Total</b>				<b>\$2,303,651.70</b>

Therefore, based on the results of the evaluation process and the inclusion of the upgraded compound meters for our medium size meters, staff recommends executing a contract with HD Supply Waterworks in the amount of \$2,303,651.70.

ITEM	Possible Score	Weight	Total Score	Midwest Meter (A)	Midwest Meter (B)	Ferguson	HD Supply	Mueller
<b>METERS-SMALL-5/8" to 1"</b>								
Precision / Accuracy	5	6	30	23.16	19.68	14.52	29.1	14.52
Meter Alerts	5	5	25	25	25	25	25	15
Durability / Warranty / Guarantee	5	6	30	25.98	27.96	18	30	27.96
Internal Memory	5	3	15	6	6	15	15	3
<b>SUB TOTAL</b>	<b>20</b>		<b>100</b>	<b>80.14</b>	<b>78.64</b>	<b>72.52</b>	<b>99.1</b>	<b>60.48</b>
<b>METERS-MEDIUM-1 1/2" &amp; 2" (RESIDENTIAL METER)</b>								
Precision / Accuracy	5	6	30	16.8	19.2	13.2	20.4	13.2
Meter Alerts	5	5	25	25	25	25	20	15
Durability / Warranty / Guarantee	5	6	30	13.98	13.98	18	13.98	27.96
Internal Memory	5	3	15	6	6	15	3	3
<b>SUB TOTAL</b>	<b>20</b>		<b>100</b>	<b>61.78</b>	<b>64.18</b>	<b>71.2</b>	<b>57.38</b>	<b>59.16</b>
<b>METERS-MEDIUM-1 1/2" &amp; 2" (COMPOUND METER)</b>								
Precision / Accuracy	5	6	30	13.2	14.4	6	27.6	6
Meter Alerts	5	5	25	25	25	5	20	5
Durability / Warranty / Guarantee	5	6	30	18	18	6	13.98	6
Internal Memory	5	3	15	6	6	3	15	3
<b>SUB TOTAL</b>	<b>20</b>		<b>100</b>	<b>62.2</b>	<b>63.4</b>	<b>20</b>	<b>76.58</b>	<b>20</b>
<b>METERS-LARGE-3", 4" &amp; 6"</b>								
Precision / Accuracy	5	6	30	9.42	21	10.26	16.26	18.84
Meter Alerts	5	5	25	25	25	25	20	10
Durability / Warranty / Guarantee	5	6	30	18	12	13.98	13.98	24
Internal Memory	5	3	15	6	6	15	15	9
<b>SUB TOTAL</b>	<b>20</b>		<b>100</b>	<b>58.42</b>	<b>64</b>	<b>64.24</b>	<b>65.24</b>	<b>61.84</b>
<b>AMI SYSTEM</b>								
Meter Interface Unit(MIU)	5	3	15	3	3	9	15	9
Capital Infrastructure System	5	9	45	27	27	36	45	27
Licensing	5	9	45	27	27	18	45	9
Two Way Capability	5	9	45	45	45	45	45	45
Secondary System	5	3	15	3	3	3	15	15
MUNIS Interface	5	5	25	25	25	25	25	25
Leak Detection	5	3	15	15	15	15	15	15
Training	5	3	15	6	6	15	15	12
Customer Service	5	7	35	35	35	35	35	35
MIU Battery Life / Guarantee	5	6	30	24	24	18	24	30
Miscellaneous	5	3	15	15	15	9.9	11.49	14.49
<b>SUB TOTAL</b>	<b>55</b>		<b>300</b>	<b>225</b>	<b>225</b>	<b>228.9</b>	<b>290.49</b>	<b>236.49</b>
<b>INSTALLATION</b>								
Miscellaneous (Meter Install)	5	10	50	35	35	35	50	30
Miscellaneous (AMR Install)	5	10	50	50	50	50	50	50
<b>SUB TOTAL</b>	<b>10</b>		<b>100</b>	<b>85</b>	<b>85</b>	<b>85</b>	<b>100</b>	<b>80</b>
<b>OTHER ITEMS (LIST)</b>								
Miscellaneous (Cost Range)	5	60	300	120	120	180	180	180
<b>SUB TOTAL</b>	<b>5</b>		<b>300</b>	<b>120</b>	<b>120</b>	<b>180</b>	<b>180</b>	<b>180</b>
<b>EVALUATION TOTALS</b>								
<b>TOTAL SCORE (RESIDENTIAL)</b>			<b>1000</b>	<b>630.34</b>	<b>636.82</b>	<b>701.86</b>	<b>792.21</b>	<b>677.97</b>
<b>TOTAL SCORE (COMPOUND)</b>			<b>1000</b>	<b>630.76</b>	<b>636.04</b>	<b>650.66</b>	<b>811.41</b>	<b>638.81</b>
<b>RANK (RESIDENTIAL)</b>				<b>5</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>3</b>
<b>RANK (COMPOUND)</b>				<b>5</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>3</b>

## ATTACHMENT B - BASE BID COSTS

<b>HD Supply</b>	water meters	Style of Meter	quantity	unit price	total cost
	5/8"	Residential	4020	\$348	\$1,398,960
	1"	Residential	315	\$398	\$125,370
	1 1/2"	Residential	355	\$765	\$271,575
	2"	Residential	129	\$900	\$116,100
	3"	Compound	38	\$1,930	\$73,340
	4"	Compound	11	\$2,945	\$32,395
	6"	Compound	2	\$4,995	\$9,990
				Meter total cost:	\$2,027,730
				AMR Infrastructure	\$85,200.00
				Handheld Reader	\$4,500.00
				System Setup Total	\$89,700.00
				Grand Total	\$2,117,430

<b>Mueller</b>	water meters	Style of Meter	quantity	unit price	total cost
	5/8"	Residential	4020	\$323.01	\$1,298,500.20
	1"	Residential	315	\$404.63	\$127,458.45
	1 1/2"	Residential	355	\$578.40	\$205,332.00
	2"	Residential	129	\$656.38	\$84,673.02
	3"	Compound	38	\$2,239.99	\$85,119.62
	4"	Compound	11	\$2,698.18	\$29,679.98
	6"	Compound	2	\$4,435.58	\$8,871.16
				Meter total cost:	\$1,839,634.43
				AMI Infrastructure	\$179,540.00
				Handheld Reader	\$5,400.00
				System Setup Total	\$184,940.00
				Grand Total	\$2,024,574.43

<b>Ferguson</b>	water meters	Style of Meter	quantity	unit price	total cost
	5/8"	Residential	4020	\$346.54	\$1,393,090.80
	1"	Residential	315	\$413.60	\$130,284.00
	1 1/2"	Residential	355	\$784.96	\$278,660.80
	2"	Residential	129	\$872.85	\$112,597.65
	3"	Compound	38	\$2,355.94	\$89,525.72
	4"	Compound	11	\$2,620.64	\$28,827.04
	6"	Compound	2	\$3,992.01	\$7,984.02
				Meter total cost:	\$2,040,970.03
				AMI Infrastructure	\$120,824.00
				Handheld Reader	\$5,000.00
				System Setup Total	\$125,824.00
				Grand Total	\$2,166,794.03

## ATTACHMENT B - BASE BID COSTS

Midwest Meter	water meters	Style of Meter	quantity	unit price	total cost
(A)	5/8"	Residential	4020	\$380.90	\$1,531,218.00
	1"	Residential	315	\$424.78	\$133,805.70
	1 1/2"	Residential	355	\$785.63	\$278,898.65
	2"	Residential	129	\$1,015.63	\$131,016.27
	3"	Compound	38	\$2,460.00	\$93,480.00
	4"	Compound	11	\$4,053.75	\$44,591.25
	6"	Compound	2	\$6,303.75	\$12,607.50
				Meter total cost:	\$2,225,617.37
				AMR Infrastructure	\$132,500.00
				Handheld Reader	\$3,375.00
				System Setup Total	\$135,875.00
				Grand Total	\$2,361,492.37

Midwest Meter	water meters	Style of Meter	quantity	unit price	total cost
(B)	5/8"	Residential	4020	\$301.25	\$1,211,025.00
	1"	Residential	315	\$361.88	\$113,992.20
	1 1/2"	Residential	355	\$785.63	\$278,898.65
	2"	Residential	129	\$1,015.63	\$131,016.27
	3"	Compound	38	\$2,460.00	\$93,480.00
	4"	Compound	11	\$4,053.75	\$44,591.25
	6"	Compound	2	\$6,303.75	\$12,607.50
				Meter total cost:	\$1,885,610.87
				AMR Infrastructure	\$132,500.00
				Handheld Reader	\$3,375.00
				System Setup Total	\$135,875.00
				Grand Total	\$2,021,485.87



Village of Bensenville

Master Project Agreement

Dated \_\_\_\_\_, 20\_\_\_\_

HD Supply Waterworks, Ltd.  
220 S Westgate Dr  
Carol Stream, IL 60188

Agreement Number \_\_\_\_\_

# Table of Contents

	Section
Purpose and Scope.....	1
Definitions and Terminology.....	2
Term.....	3
HD Supply Waterworks' Responsibilities .....	4
Client's Responsibilities.....	5
Default of Client.....	6
Default of HD Supply Waterworks.....	7
Insolvency.....	8
Taxes, Permits, and Fees.....	9
Warranty.....	10
Indemnity.....	11
Safety.....	12
Liability and Force Majeure .....	13
Insurance.....	14
Hazardous Materials.....	15
Cleanup.....	16
Delays and Access.....	17
Quality of Materials.....	18
Financing Contract.....	19
Legal Governance .....	20
Dispute Resolution.....	21
Attorney's Fees.....	22
Assignability.....	23
Notices.....	24
Modifications.....	25
Severability.....	26
Binding Authority.....	27

Appendix A	Installation Contract
<i>Exhibit A-1</i>	<i>Material Procurement Summary for Installation Contract</i>
<i>Exhibit A-2</i>	<i>Acceptance Certificate</i>
Appendix B	Service Contract
<i>Exhibit B-1</i>	<i>Scope of Work</i>
<i>Exhibit B-2</i>	<i>Service Change Order</i>
Appendix C	Concerning any Financing Contract
Appendix D	Warranty
<i>Exhibit D-1</i>	<i>Manufacturers' Warranties</i>
Appendix E	Form of Opinion of Client's Counsel



## Master Project Agreement

**This Master Project Agreement** (as hereinafter defined, this “Agreement”) dated as of \_\_\_\_\_, 20\_\_\_\_ between HD Supply Waterworks, Ltd. a limited partnership consisting of HD Supply Waterworks Group, Inc. (limited Partner) and HD Supply GP & Management, Inc. (General Partner) (as hereinafter defined, “HD Supply Waterworks”), and The Village of Bensenville (as hereinafter defined, “Client”).

**1. Purpose and Scope.** The Agreement is a Master Project Agreement to provide certain Work to Client. HD Supply Waterworks agrees to undertake the necessary Work as specified in this Agreement, and Client agrees to take all actions that are identified in this Agreement and to pay HD Supply Waterworks in the manner contemplated by this Agreement. This Agreement consists of the text set forth herein and the text set forth in each Appendix to this Agreement that is executed and delivered by the Parties. The Appendices checked below are the only Appendices that have been executed and delivered by the Parties as part of this Agreement (provided, however, that Exhibits that are part of a stated Appendix also shall be part of this Agreement):

- Appendix A--Procurement, Installation and Management Contract
- Appendix B--Service Contract
- Appendix C--Financing Contract
- Appendix D--Warranty
- Appendix E--Client’s Counsel Opinion Letter

**2. Definitions and Terminology.** When used in this Agreement or in any of its attachments, the following capitalized terms shall have the respective meanings as follows:

“Agreement” shall mean this Master Project Agreement, to include all Appendices and Exhibits.

“AWWA” shall mean the American Water Works Association

“AMR” shall mean Automatic Meter Reading

“AMI” shall mean Advanced Metering Infrastructure

“Client” shall mean Village of Bensenville together with its successors.

“Factory Installation Recommendation” shall mean guidelines for installation procedures given by the manufacturer of the equipment.

“Financing Contract” shall mean any separate financing agreement that may be executed and delivered by the Parties as contemplated by Appendix C to this Agreement, but only to the extent that Section 1 of this Agreement shall indicate that Appendix C applies to this Agreement. No Financing Contract delivered pursuant to this Agreement shall constitute a part of this Agreement, and this Agreement does not constitute a part of any Financing Contract executed and delivered by the Parties.

“Force Majuere” shall mean conditions beyond the reasonable control, or not the result of willful misconduct or negligence of the Party, including, without limitation acts of God, storms, extraordinary weather, acts of government units, strikes or labor disputes, fire, explosions, thefts, vandalism, riots, acts of war or terrorism, non-price related unavailability of Project Materials and Supplies, and unavailability of fuel.

“Hazardous Materials” are any materials, substances, chemicals, and wastes recognized as hazardous or toxic (or other interchangeable terms of equal meaning) under applicable laws, regulations, rules, ordinances, and any governmental or authoritative body having jurisdiction over the execution of this Agreement and its attachments.

“HD Supply Waterworks” shall mean HD Supply Waterworks, Ltd., a limited partnership, together with its successors.

“Installation Contract” shall mean the Procurement, Installation, and Management Contract attached to this Agreement as Appendix A, but only to the extent that the Parties have executed and delivered such Appendix A.

“Manufacturer Defect” shall mean any fault or defect in materials or workmanship that manifests itself during the Warranty Period and is covered by the manufacturer’s warranty.

“Manufacturer’s Warranty Period” shall have the meaning set forth in Appendix D to this Agreement.

“Party” shall mean either HD Supply Waterworks or Client.

“Project” shall mean the work to be performed by HD Supply Waterworks or its subcontractors as described in this Agreement.

“Project Materials and Supplies” shall mean the materials and equipment specified in Appendix A.

“RF” shall be interchangeable with the term Radio Frequency.

“State” shall mean the State of Illinois in which Client is located.

“Third Party” shall mean a person or entity other than Client or HD Supply Waterworks.

“Utility Service Area” shall mean the geographic area where the Project will be installed and the Work (and, if applicable, the Services) will be performed. This geographic area shall be specifically defined as \_\_\_\_\_ and any other geographic areas including Client’s system that HD Supply Waterworks, in its discretion, shall approve in writing for inclusion in the Utility Service Area.

“Warranty Period” shall have the meaning set forth in Appendix D to this Agreement.

“Work” shall mean all work required for the completion of HD Supply Waterworks’ obligations under this Agreement, including, to the extent that the Parties execute and deliver the Installation Contract attached hereto as Appendix A, the Work contemplated by the Installation Contract.

**3. Term.** The Term of this Agreement shall begin on the commencement date as listed in the opening paragraph and, unless earlier terminated in the manner contemplated by this Agreement, shall endure for the period specified in Appendix A. Notwithstanding the foregoing, either Party may terminate this Agreement and the Services and Work described herein by giving the other Party sixty (60) days prior written notice of its termination of this Agreement. No such termination shall have the effect of terminating any Financing Contract between the Parties if there are any amounts outstanding in respect of such Financing Contract.

**4. HD Supply Waterworks’ Responsibility.** HD Supply Waterworks shall provide Services, supply Project Materials and Supplies, and do all other Work as described in this Agreement. Without limiting the generality of the foregoing, HD Supply Waterworks shall maintain supervision of all its subcontractors. Any Work beyond the scope of the Work agreed to herein shall not be considered as part of this Agreement. There shall be no implied or verbal agreements between the Parties relating to the subject matter of this Agreement.

**5. Client’s Responsibility.** Client shall be responsible for cooperating with HD Supply Waterworks, providing accurate information in a timely manner, and making payment in a timely manner for Work performed, Project Materials and Supplies furnished, or Services rendered. Client shall designate a representative who will be fully acquainted with the Work and will be reasonably accessible to HD Supply Waterworks and its subcontractors, and will have the authority to make decisions on behalf of Client. Client shall provide to HD Supply Waterworks and its subcontractors all information regarding legal limitations, utility locations and other information reasonably pertinent to this Agreement and the Project. Client shall be required to give prompt notice should it become aware of any fault or defect in the Project.

**6. Default of Client.** The following events shall be considered events of Default of Client: (a) The failure of Client to make payments to HD Supply Waterworks in accordance with the terms of this Agreement; (b) any representation or warranty provided by Client that proves to be materially false or misleading when made; (c) any material failure of Client to comply with or perform according to the terms of this Agreement or to correct such failure to perform within any

cure period specified in this Agreement. If an event of Default by Client occurs, HD Supply Waterworks will exercise any and all remedies available to it under this Agreement.

**7. Default of HD Supply Waterworks.** The following events shall be considered events of default on the part of HD Supply Waterworks: (a) failure of HD Supply Waterworks to provide adequate personnel, equipment, and supplies in accordance with the provisions and specifications of this Agreement, (b) any failure to promptly re-perform, within a reasonable time, Work or Services that properly were rejected as defective or nonconforming, (c) the failure of HD Supply Waterworks to deliver its Work and Services free and clear of any lien or encumbrance by any subcontractor, laborer, materialman, or other creditor of HD Supply Waterworks, (d) any representation or warranty (other than a warranty as contemplated by Section 10 of this Agreement) provided by HD Supply Waterworks proves to be materially false or misleading when made, (e) any material failure of HD Supply Waterworks to comply with or perform according to the terms of this Agreement or to correct such failure to perform within any cure period specified in this Agreement. In the event of default by HD Supply Waterworks, Client may exercise any and all remedies available to it under this Agreement.

**8. Insolvency.** In the event that either Party becomes insolvent or makes an assignment for the benefit of creditors or is adjudicated bankrupt or admits in writing that it is unable to pay its debts, or should any proceedings be instituted under any state or Federal Law for relief of debtors or for the appointment of a receiver, trustee, or liquidator of either Party, or should voluntary petition in bankruptcy or a reorganization or any adjudication of either Party as an insolvent or a bankrupt be filed, or should an attachment be levied upon either Parties equipment and not removed within five (5) days therefrom, then upon the occurrence of any such event, the other Party shall thereupon have the right to cancel this Agreement and to terminate immediately all work hereunder without further obligation.

**9. Taxes, Permits, and Fees.** HD Supply Waterworks shall be responsible for obtaining all permits and related permit fees associated with the Project; however the city must disclose any known fees in advance of contract signing. Client shall pay sales, use, consumer, and like taxes, when applicable. Client shall be responsible for securing at its sole expense any other necessary approvals, easements, assessments, or required zoning changes. Client shall be responsible for personal property taxes and real estate taxes on the Project. HD Supply Waterworks shall be responsible for all taxes measured by HD Supply Waterworks' income.

**10. Warranty.** The warranty provided by HD Supply Waterworks and the manufacturer on Project Materials and Supplies, Work, and Services shall be as set forth in Appendix D.

**11. Indemnity.** Subject to Sections 13 and 14 of this Agreement:

(a) Except as otherwise expressly provided in Section 11(b) below, Client assumes all liability and risk associated with the use, operation, and storage of the Project Materials and Supplies and for property damage, injuries, or deaths associated with or arising out of the use and operation of the Project unless said damage, injury, or death is the direct result of HD Supply Waterworks, its employees, and agents.

(b) HD Supply Waterworks shall indemnify Client and employees against all claims of subcontractors or materialmen hired by HD Supply Waterworks for Work relating to the Project. HD Supply Waterworks and Client agree that HD Supply Waterworks is responsible only for damages that result from the intentional misconduct or the negligent act or omission of HD Supply Waterworks or its subcontractors.

**12. Safety.** HD Supply Waterworks shall have the primary responsibility for the supervision, initiation, and maintaining all safety precautions and programs necessary to complete its Work associated with the Project. HD Supply Waterworks agrees to comply with all applicable regulations, ordinances, and laws relating to safety. It shall be the responsibility of Client, however, to assure that the sites controlled by Client at which HD Supply Waterworks expected to do its Work are safe sites.

**13. Liability and Force Majeure.** HD Supply Waterworks' liability under this Agreement shall not exceed the amounts listed in its primary general comprehensive policy limits mandated in Section 14. Neither HD Supply Waterworks nor Client shall be responsible to each other for any indirect, consequential, or special damages resulting in any form from the Project. Neither HD Supply Waterworks nor Client shall be responsible to each other for injury, loss, damage, or delay that arise from Force Majeure. HD Supply Waterworks shall not be responsible for any equipment or supplies other than Project Equipment and Supplies.

**14. Insurance and Risk.**

(a) During the Term of this Agreement HD Supply Waterworks shall maintain and shall assure that its subcontractors maintain insurance as follows:

- (1) workers' compensation insurance (or self-insurance) in accordance with applicable law;
- (2) Comprehensive general liability insurance
- (3) Motor vehicle liability insurance

Such coverage may be provided under primary and excess policies. At the request of Client, HD Supply Waterworks shall provide or cause its subcontractor to provide to Client a certificate of insurance with respect to such policies.

(b) Client shall assume full responsibility for any risk of loss except to the extent that (1) the damages are the result of negligence, failure to act, or willful or intentional act of HD Supply Waterworks or its subcontractors as provided in Section 11(b) above, or (2) the loss is covered by the insurance contemplated by Section 14(a) above.

**15. Hazardous Materials.** The Project and the Work expressly excludes any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of Hazardous Materials or substances. Client warrants and represents that, to the best of Client's knowledge, there is no asbestos or other hazardous materials in the Project premises in areas that HD Supply Waterworks shall be required to perform work that in any way will affect HD Supply Waterworks' ability to complete the Project. If HD Supply Waterworks is made aware or suspects the presence of Hazardous Materials, HD Supply Waterworks reserves the right to stop work in the affected area and shall immediately notify Client. It shall remain Client's responsibility to correct the condition to comply with local and federal standards and regulations. Client shall remain responsible for any Claims that result from the presence of the Hazardous Materials.

**16. Cleanup.** HD Supply Waterworks will be responsible for keeping the Project area free from the accumulation of waste materials or trash that result from the Project-related Work. Upon completion of the initial Project-related Work, HD Supply Waterworks will remove all waste materials, trash, tools, construction equipment and supplies, and shall remove all surplus materials associated with the Project.

**17. Delays and Access.** If conditions arise that delay the commencement, completion, or servicing of the Project as a consequence of Force Majeure or failure of Client to perform its obligation that prevents HD Supply Waterworks or its agents from performing work, then HD Supply Waterworks will notify Client in writing of the existence of delay and the nature of the delay. Client and HD Supply Waterworks will then mutually agree upon any new completion dates, disbursement terms, and payment terms for the Work contemplated by this Agreement. Nothing in the foregoing sentence shall be deemed to relieve Client from its obligation to provide HD Supply Waterworks and its subcontractors reasonable and safe access to facilities that are necessary for HD Supply Waterworks to complete the Work.

**18. Quality of Materials.** HD Supply Waterworks will use the Project Materials and Supplies specified in Appendix A. Where brand names and part numbers are specified HD Supply Waterworks will use the items listed in Appendix A unless specified items are unavailable or discontinued. In this instance HD Supply Waterworks will work with Client to choose a substitute. Where brand names are not specified, HD Supply Waterworks will choose Project Materials and Supplies that are within industry norms and standards. Should Client require Project Materials and Supplies with specific requirements, Client should make these specifications known in a timely manner. HD Supply Waterworks can use Client-furnished or Client-specific materials; however, Client will need to provide them or pay the difference in price and labor should any exist. Examples of Client specific requirements include but are not limited to country or state of origin, union manufactured, specific brand, or manufacturing process.

**19. Financing.** If the Parties so agree and have so indicated in Section 1 of this Agreement, HD Supply Waterworks shall provide financing for the Project pursuant to any separate Financing Contract executed and delivered by the Parties as contemplated by Appendix C. The Financing Contract is not part of this Agreement, and this Agreement is not part of the Financing Contract.

**20. Legal Governance.** The laws of the State shall govern this Agreement and the relationship of the Parties contemplated hereby.

**21. Dispute Resolution.**

(a) The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within three business days from receipt with a statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by these negotiations within 15 business days following the date of the initial written notice, the matter will be submitted to mediation in accordance with Section 21(b) below.

(b) Except as provided herein, no civil action with respect to any dispute, claim, or controversy arising out of or relating to this Agreement may be commenced until the Parties have attempted in good faith to resolve the matter through a mediation proceeding, under the mediation procedure of the CPR Institute for Dispute Resolution ("CPR"), JAMS/Endispute, the American Arbitration Association ("AAA"), or as otherwise agreed upon by the Parties. Either Party may commence mediation by sending a written request for mediation to the other Party, within 45 business days following the expiration of the 15-business day period under subsection (a) above, setting forth the subject of the dispute and the relief requested. Unless the Parties agree otherwise in writing, a single mediator shall conduct the mediation, and the mediator shall be selected from an appropriate CPR, JAMS/Endispute, AAA or other panel as agreed upon by the Parties. The mediation shall be conducted in the county of the State in which Client has its principal office. Each Party may seek equitable relief prior to or during the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the internal mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the Parties so desire.

(c) The Parties further agree that in the event any dispute between them relating to this Agreement is not resolved under Section 21(a) or (b) above, exclusive jurisdiction shall be in the trial courts located within the county of the State in which Client has its principal office, any objections as to jurisdiction or venue in such court being expressly waived. In the event of a breach or threatened breach by Client of this Agreement, HD Supply Waterworks in its sole discretion may, in addition to other rights and remedies existing in its favor and without being required to post a bond or other security, apply to any court for specific performance and/or injunctive or other relief in order to enforce, or prevent the violation of, this Agreement. **BOTH CLIENT AND HD SUPPLY WATERWORKS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATIONS, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.**

(d) All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State or any other jurisdiction) that would cause the application hereto of the laws of any jurisdiction other than the laws of the State.

**22. Attorney's Fees.** In the event of any litigation between Parties hereto arising from or with respect to this Agreement, the breach of any warranty, representation or breach of any other terms hereof, and/or the performance of the obligations hereunder, the losing Party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including but not limited to reasonable fees and costs of attorneys, accountants and experts, whether incurred at the pre-trial, trial or appellate levels, and/or bankruptcy or other creditors rights' proceedings.

**23. Assignability.** Client may not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without HD Supply Waterworks' prior written consent.

**24. Notices.** All notices and communications related to this Agreement shall be made in following address:

If to Client:

The City of XXXX, XX

\_\_\_\_\_

\_\_\_\_\_

If to HD Supply Waterworks:

HD Supply Waterworks, Ltd.

220 South Westgate Dr.

Carol Stream, IL 60188 Attn: Tom Whalls

**25. Binding Effect.** Each of Client and HD Supply Waterworks represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by such Party and constitutes a legal, valid and binding agreement of such Party enforceable against such Party in accordance with its terms. As evidence that Client is bound, Client shall provide HD Supply Waterworks an opinion of its counsel as set forth at Appendix E to this Agreement.

**26. Modifications.** This Agreement shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed and agreed to by both HD Supply Waterworks and Client.

**27. Severability.** Any term or provision found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first above written.

**“HD SUPPLY WATERWORKS”**

HD SUPPLY WATERWORKS, LTD.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title \_\_\_\_\_

**“CLIENT”**

THE CITY OF XXXX, XX

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title \_\_\_\_\_



### Procurement, Installation, and Management Contract

Provider: HD Supply Waterworks, Ltd. ("HD Supply Waterworks")

Client: Village of Bensenville

This Procurement, Installation, and Management Contract (the "Installation Contract") is an Appendix to the Master Project Agreement of even date herewith (the "Master Agreement") concerning the Project referenced in the Master Agreement.

**1. Summary of Work.** The Summary of Work for the Project contemplated by the Master Agreement consists of application design of the AMR system, providing and installing all Project Materials and Supplies as listed in Exhibit A-1, and management of the installation process. The purpose of this Work is to upgrade the existing system in order to provide an AMR-capable system that will meet or exceed the Factory Installation Recommendations.

#### **Summary of Work:**

Supply and install Hardware, Software and Meters, Smartpoints per the City of Bensenville Request for Proposal

**2. Project Implementation Period.** The Project is projected to commence on \_\_\_\_\_, and will be implemented over an approximate \_\_\_\_\_ period of time. Below is an estimated construction Schedule:

<b>Estimated Construction Schedule:</b>	
Project Start Date	XX/XX/XXXX
25% Complete	____ Days After Start Date
50%	____ Days After Start Date
75%	____ Days After Start Date
100%	____ Days After Start Date

**3. Compensation.** Client agrees to pay HD Supply Waterworks as estimated \$ **2,303,651.70** for the proscribed Project Materials and Supplies and work as described in Exhibit A-1 and additionally for each supplemental item as proscribed. In addition, Client agrees to pay HD Supply Waterworks for the Work and Services contemplated by this Installation Contract as set forth in the Master Agreement. Payment terms shall be as follows:

(a) Payment for Project Materials and Supplies. Client will make payment to HD Supply Waterworks for Project Materials and Supplies within thirty business days of the receipt of an invoice for such Project Materials and Supplies (which will be invoiced no more frequently than weekly. No payment shall be made for Project Materials and Supplies, however, until Client shall have issued a related Acceptance Certificate, which Client shall issue promptly following its receipt of Project Materials and Supplies.

(b) Draw Schedule. This Section 3(b) [ ] shall be applicable, or [ ] shall not be applicable (mark as appropriate) to this Installation Contract. If this Section 3(b) is applicable, HD Supply Waterworks shall be entitled to percentage payment for its Work and Services in accordance with the following draw schedule:

<b>Draw Schedule:</b>	
Project Start Date	XX/XX/XXXX
25% Complete	XX/XX/XXXX
50%	XX/XX/XXXX
75%	XX/XX/XXXX
100%	XX/XX/XXXX

No payment shall be made, however, until Client shall have issued an Acceptance Certificate with respect to such Work and Services, which Client shall issue promptly based on achievement of the draw schedule milestones set forth above. HD Supply Waterworks shall be paid for Project Materials and Supplies as set forth in Section 3(a) above.

(c) No Draw Schedule. If the Parties have not agreed to a draw schedule in Section 3(b) above, Client shall pay HD Supply Waterworks for all Work and for Services as such Work and Services are performed, with HD Supply Waterworks to bill Client on a monthly basis for all of the foregoing. Client will make payment for all Work and Services performed under this Installation Contract within thirty (30) days after receipt of HD Supply Waterworks' invoice for such Work and Services (which will be invoiced monthly). No payment shall be made, however, until Client shall have issued an Acceptance Certificate with respect to such Work and Services, which Client shall issue promptly based on achievement of the draw schedule milestones set forth above. HD Supply Waterworks shall be paid for Project Materials and Supplies as set forth in Section 3(a) above.

(d) Financing Contract. Where the Parties have agreed to a separate Financing Contract (which is not part of this Contract, and this Contract is not part of the Financing Contract), payment shall be made as monies are advanced under the Financing Contract.

#### **4. Installation Responsibilities of HD Supply Waterworks**

(a) Project Installation. HD Supply Waterworks agrees to do the Work, provide the Services, and furnish the Project Materials and Supplies in accordance with Client's specifications that are attached to this Installation Contract during the estimated construction period listed above.

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HD Supply Waterworks will be responsible for installing the Project according to manufacturer standards and such local standards, if any, as are attached hereto as are described below:

HD Supply Waterworks will warrant the Project Materials and Supplies, the Work, and any other Services as provided in Section 10 of the Master Agreement. Client may elect to execute a Service Contract with HD Supply Waterworks for additional maintenance provisions.

(b) Water Shutoffs. HD Supply Waterworks, its agents and subcontractors, will be responsible for shutting off the water to each meter serviced as well as notifying each customer of the water shutoff. Some assistance may be required by Client with the notification of its customers. The Installation team will knock on the doors of residential customers as well as leave notifications on their doors. In the case of large commercial customers such as: schools, hospitals, nursing homes or any other commercial customer, special efforts will be made to ensure minimum disruption to their water needs. In order to prevent any damage from running flush valves or any other plumbing fixtures that are sensitive to water shutoffs, HD Supply Waterworks will schedule replacements with these commercial customers and will notify the maintenance personnel when turning the water back on at these facilities. Regardless of any effort of HD Supply Waterworks, ultimate responsibility of any and all fixtures inside buildings will remain the responsibility of the end user and/or Client as detailed in any Service Contract that exists between Client and its Customers.

In the event that the service location lacks a curb stop, or it is defective, HD Supply or its representative will contact the utility. In this event the utility will either A) authorize HD Supply to repair the defect at the price as listed in appendix A-1 or, B) the utility will repair the defect themselves and notify HD Supply that the repair has been made or, C) Exclude the meter change out from project.

(c) Meter Boxes, Vaults, and Roadways. HD Supply Waterworks is responsible for repairing any damages to meter boxes, vaults, and roadways that result from the installation of the Project; provided, however, that HD Supply Waterworks shall not be liable for pre-existing conditions or leaks. HD Supply Waterworks will install new meter boxes as authorized by the Cities representative, with appropriate lid selection, mutually agreed upon. The \_\_\_\_\_ will retain all existing water meters and materials pulled from the ground during the installation.

(d) AMI Infrastructure Work. HD Supply Waterworks will develop a *Scope of Work* specific to the design, deployment, and execution of any AMI infrastructure work as per the project needs. This *Scope of Work* will be tailored to the project, as well as any site specific conditions. Once this *Scope of Work* is developed and mutually agreed upon by the Parties, it will become extension to the Master Project Agreement Appendix A, and as such will be binding between the parties.

(e) Disposal. The \_\_\_\_\_ will be responsible for the disposal of all waste, debris and materials from the installation of the Project.

(f) Certified Installers. In the event that the Installation Contract includes gas or electric meters or should local laws dictate, HD Supply Waterworks will ensure that the meter installers are certified by the governing board as required.

(g) Liability.

Water Meter Change out: HD Supply Waterworks is responsible for any damages that occur within 6" on either side of the water meter resulting from the Project installation. Any damages incurred within this 6" area will be promptly repaired at the expense of HD Supply Waterworks. HD Supply Waterworks is not liable for damages outside the 6" zone, either on the water distribution side or on the customer side incurred from the Project installation including shutoff, temporary outage, and restart of water service. HD Supply Waterworks is not liable for any pre-existing conditions including leaks, faulty workmanship and materials from previous projects or rust. Should such conditions occur (i.e. leaks) HD Supply Waterworks may document them and at Client's written request repair them for a negotiated price.

(h) Non-Covered Work. Contracted meter change outs contemplate a standard meter change out. In the event that locations exist where conditions exist which require nonstandard work (i.e. move a service location etc., move fences for or other customer structures & items for access, install systems in heavy traffic locations alleys, parking lots etc.), HD Supply and the City will discuss pricing and work may proceed from this point or the city may elect to excuse this work from the project. In any event where safety concerns would cause undue risk to the work Crews.

## **5. Responsibilities of Client during Installation.**

(a) Owner-Furnished Data. Client shall provide HD Supply Waterworks all technical data in Client's possession, including previous reports, maps, surveys, and all other information in Client's possession that HD Supply Waterworks informs Client's representative is necessary as it relates to Project. Client shall be responsible for identifying the location of meters. Should HD Supply Waterworks require assistance in finding the meter location, Client shall locate the meter in a timely manner.

(b) Access to Facilities and Property. Client shall make its system facilities and properties available and accessible for inspection by HD Supply Waterworks and affiliates.

(c) Client Cooperation. Client support will be required during implementation of this Improvement Measure to obtain access to meter boxes/pits, infrastructure sites and to coordinate utility interruptions. Client will provide notification in its billing to its customers that HD Supply Waterworks is performing the designated work and that possible service interruption may result.

(d) Timely Review. That Client through its designated representatives shall examine all invoices, and inspect all completed work by HD Supply Waterworks in a timely manner. In the event that a Client delay results in the lack of a progress payment disbursement, reserves the right to delay further work without penalty until such time as payments are made. HD Supply Waterworks further reserves all rights and options available to it under the Master Project Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Installation Contract as of \_\_\_\_\_, 20\_\_\_\_.

**“HD SUPPLY WATERWORKS”**

HD SUPPLY WATERWORKS, LTD.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title: \_\_\_\_\_

**“Village of Bensenville”**

THE Village of Bensenville

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title \_\_\_\_\_



**Exhibit A-1**

**Material Procurement Summary**  
**For Installation Contract**

Provider: HD Supply Waterworks, Ltd. ("HD Supply Waterworks")

Client: Village of Bensenville

This Material Procurement Summary is an Exhibit to and hence part of the Installation Contract contemplated by the Master Project Agreement (the "Master Agreement"), and it includes all Project Materials and Supplies to be used in connection with the Work contemplated by the Installation Contract and the Master Agreement, as the same will be identified specifically in future invoices generated by HD Supply Waterworks and attached to each Acceptance Certificate (Exhibit A-2) contained in the Installation Contract. A summary of the Project Materials and Supplies required for the Project is as follows:

<b>Work Description and Pricing</b>
Per Bensenville RFP submitted 2/15/2013 Capital Projects #13.2.01

**Exhibit A-2**

**Acceptance Certificate**

Client under the Master Project Agreement (the “Master Agreement”) with HD Supply Waterworks, Ltd. hereby certifies:

This Acceptance Certificate is a Partial/Final (Circle one) Acceptance Certificate delivered under the Procurement, Installation, and Management Contract (the “Installation Contract”) to which it is attached.

1. The Project Materials and Supplies listed on the attached invoice (or in the event of a final Acceptance Certificate all Project Materials and Supplies provided under the Installation Contract and the Master Agreement), have been delivered to Client.

2. Client has conducted such inspection and/or testing of the Project Materials and Supplies as it deems necessary and appropriate and hereby acknowledges that it accepts the Project Materials and Supplies for all purposes on the date indicated below. The Project Materials and Supplies have been examined and/or tested and are in good operating order and condition and is in all respects satisfactory to the undersigned and complies with the terms of the Installation Contract, subject, however, to the warranty provided in Section 10 of the Master Agreement.

3. Based on and the acceptance set forth herein, Client agrees that the Manufacturer’s Warranty Period on all water equipment shall be deemed to have begun on the date when the manufacturer shipped such equipment and that the Manufacturer’s Warranty Period shall end in accordance to the referenced warranties in Appendix D, Exhibit D-1.

4. Client has examined all Work and Services performed by HD Supply Waterworks and covered by the related invoice or draw requests and finds such Work and Services to have been performed in an workmanlike manner and in accordance with all applicable specifications. Client therefore accepts such Work and Services. Based on the acceptance set forth herein, Client agrees that the Warranty Period for the Work and Services shall end on \_\_\_\_\_, 20\_\_ (i.e. one year from the date hereof).

5. The following is a punch list of items left to be completed for current phase or final phase (Circle one) of the Project:

Insert Punch list

Agreed to and Accepted as of \_\_\_\_\_, 20\_\_ by:

**“Village of Bensenville”**

The Village of Bensenville

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title: \_\_\_\_\_

**Appendix B**

**Service Contract**

*Exhibit B-2*

See AMI Agreement\_v2013a

**APPENDIX C**  
**CONCERNING A FINANCING CONTRACT**

As indicated in Section 1 of the Master Project Agreement to which this is an Appendix (the “Master Agreement”), HD Supply Waterworks and Client contemplate that the Parties will enter into a separate Financing Contract in order to provide financing for the Project to Client.

The terms of such Financing Contract shall be solely as set forth in the separate contract, which shall not be part of the Master Agreement, and neither the Master Agreement nor any other Appendix to the Master Agreement shall be part of the Financing Contract.

**IN WITNESS WHEREOF**, the Parties have executed this Appendix as of \_\_\_\_\_, 2008.

**“HD SUPPLY WATERWORKS”**

HD SUPPLY WATERWORKS, LTD.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title \_\_\_\_\_

**“CLIENT”**

THE CITY OF XXXX, XX

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Printed Title \_\_\_\_\_

## Appendix D

### WARRANTY

The warranties on water meters included in Project Materials and Supplies, and on Work, and Services shall be as follows:

#### 1. Project Materials and Supplies.

(a) General. Water meters and equipment included in Project Materials and Supplies that Client purchases from HD Supply Waterworks are warranted by the manufacturer to be free from Manufacturers' Defects for the period specified in the manufacturer's warranty. A copy of the present warranty of each water meter manufacturer that will supply water meters and equipment as part of the Project Materials and Supplies is attached hereto as Exhibit D-1. The term of such manufacturer's warranty shall be as set forth in such attached warranty (as the same may be changed from time to time during the course of the performance of the Master Agreement, but with changes to apply only to purchases of water meters occurring after the change becomes effective), but generally the start date for water meter warranties is the date of the manufacturer's shipment of such water meter as noted in the applicable Acceptance Certificate attached to this Agreement as Exhibit A-2 ("Manufacturer's Warranty Period"). PROJECT MATERIALS AND SUPPLIES OTHER THAN WATER METERS and EQUIPMENT ARE NOT WARRANTED. HD SUPPLY WATERWORKS DOES NOT PROVIDE ANY SEPARATE WARRANTY FOR PROJECT MATERIALS AND SUPPLIES.

(b) HD Supply Waterworks' Responsibility. Upon any breach of the manufacturer's warranty on a water meter noticed to HD Supply Waterworks during the applicable Manufacturer's Warranty Period, HD Supply Waterworks' sole responsibility shall be to cooperate with Client in arranging for the manufacturer to repair or replace any defective water meter (including deinstallation by HD Supply Waterworks of the defective water meter and installation of the replacement water meter).

#### 2. Work and Services.

(a) General. HD Supply Waterworks warrants that all Work and Services provided by HD Supply Waterworks shall be performed by HD Supply Waterworks in a workmanlike manner and in compliance with any specifications set forth in this Agreement, with such warranty to expire one year from the date when such Work was performed or such Services were provided (the "Warranty Period").

(b) Exclusive Remedy. Upon any breach of HD Supply Waterworks' warranty as to Work or Services during the applicable Warranty Period, HD Supply Waterworks' sole responsibility shall be to perform any corrective Work or Services necessary to bring HD Supply Waterworks' Work and Services into compliance with such requirements.

3. DISCLAIMER OF FURTHER WARRANTIES. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, HD SUPPLY WATERWORKS DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL HD SUPPLY WATERWORKS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND.

**Exhibit D-1**

**Manufacturers' Warranties**

Attached to this Exhibit D-1 are the manufacturers' warranties for each of the following manufacturers of water meters, which are the only brands of water meters that HD Supply Waterworks plans to use in connection with the Project.

## Appendix E

### FORM OF CLIENT'S COUNSEL OPINION LETTER

The City of XXXX, XX  
[Address]

HD Supply Waterworks  
[Address]

**Re: Master Project Agreement dated XXXX, XX, 200X (the "Agreement") between The City of XXXX, XX ("Client") and HD Supply Waterworks, Ltd. ("HD Supply Waterworks")**

Ladies and Gentlemen:

We have acted as counsel to Client with respect to the Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof (the "Agreement"). The terms capitalized in this opinion but not defined herein shall have the meanings assigned to them in the Agreement. Based upon the examination of these and such other documents as we have deemed relevant, it is our opinion that:

1. Client is a political subdivision of the State of XXXXX (the "State") within the meaning Section 103 (c) of the Internal Revenue Code of 1986, as amended, and is duly organized, existing and operating under the Constitution and laws of the State.

2. Client is authorized and has the power under applicable law to enter into the Agreement, and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Agreement has been duly authorized, executed and delivered by and on behalf of Client, and is a legal, valid and binding obligation of Client enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

4. The authorization and execution of the Agreement and all other proceedings of Client relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.

5. The execution of the Agreement and the appropriation of monies to pay the Payments coming due thereunder do not and will not result in the violation of any constitution, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Client.

6. There is no limitation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Client, the authority of Client or its officers or its employees to enter into the Agreement, the proper authorization and/or execution of the Agreement or the documents contemplated thereby, or the ability of Client otherwise to perform its obligations under the Agreement and the transactions contemplated thereby. To the best of our knowledge, no such litigation, action, suit or proceeding is threatened.

7. A Resolution of the Board of Directors of Client was duly and validly adopted by such governing body on XXXXX XX, 20XX, and such resolution has not been amended, modified, supplemented or repealed, and remains in full force and effect.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Agreement, but only with regard to matters specifically set forth herein.

Very truly yours,

## Advanced Metering Infrastructure (AMI) Agreement

between

[REDACTED]  
("Customer")

and

**Sensus USA Inc.**  
("Sensus")

IN WITNESS WHEREOF, the parties have caused this AMI Agreement ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: [REDACTED] ("Term"), provided that it may be extended for a longer period by written agreement. (If nothing is inserted into this blank, the Term of the agreement shall be for ten (10) years after the Effective Date.)

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer and Part (2) is a AMI Agreement between Sensus and Customer. Together, these two parts create the Agreement.

### **Sensus USA Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Sensus project number: [REDACTED]

Sensus quote number: [REDACTED] ("Quote")

This Quote is hereby attached to Exhibit E of the Agreement.

Pricing in the Quote remains firm until [REDACTED] ("Trigger Date") (If nothing is inserted in the blank, then the "Trigger Date" shall mean the first January 1 after the Effective Date. For example, if the Effective Date is June 1, 2013, the Trigger Date shall be January 1, 2014.)

All purchase orders shall be sent to the address provided by Sensus. Sensus may change this address upon notice to Customer. The "Required RF Field Equipment" means: [REDACTED] FlexNet Base Stations; [REDACTED] Remote Transceivers; and [REDACTED] Echo Transceivers. (If any of the three blanks are not completed or this is not initialized by a Sensus authorized representative, then Section 1(B) does not apply).

Sensus Authorized Representative Approval: [REDACTED]

### **Customer:** [REDACTED]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Customer order acknowledgements shall be sent to:  
[insert email address or fax number]  
[REDACTED]

Sensus shall send all invoices to: [insert mailing address, email address, fax number, as applicable]  
[REDACTED]

### **Contents of this Agreement:**

Part 1: Notification for Spectrum Manager Lease

Part 2: AMI Agreement

- Exhibit A Technical Support
- Exhibit B System Acceptance Test
- Exhibit C Statement of Work
- Exhibit D Software Listing
- Exhibit E Pricing
- Exhibit F Software as a Service

## Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through eight (8) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee.

### Customer / Lessee Information

**1**

Customer/Lessee Name:			
Attention To:		Name of Real Party in Interest:	
Street Address:		City:	
State:	Zip:	Phone:	
Fax:	Email:		

Is Customer contact information same as above?  Yes  No (If No, complete box 2 below)

### Contact Information

**2**

Company Name:			
Attention To:			
Street Address:		City:	
State:	Zip:	Phone:	
Fax:	Email:		

**3**

FCC Registration Number (FRN): _____			
If FRN Unknown, Customer Tax Identification Number (TIN): _____			

**4**

Customer/Lessee is a(n) (Select one):  Individual |  Unincorporated Association |  Trust  
 Government Entity |  Corporation |  Limited Liability Company |  General Partnership  
 Limited Partnership |  Limited Liability Partnership |  Consortium |  Other \_\_\_\_\_

### Ownership Disclosure Information

**5**

1) Is the Customer required to file FCC Form 602, Ownership Disclosure Information for the Wireless Telecommunications Services?	<input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, complete next question)
2) If the response to 1) above is Yes, provide the FCC Form 602 that has been filed in conjunction with application or is already on file with the FCC	File Number: _____

### Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

**6**

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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### Basic Qualification Information

**7**

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Customer/Lessee Certification Statements**

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	<input type="checkbox"/> Yes
2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	<input type="checkbox"/> Yes
3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	<input type="checkbox"/> Yes
4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	<input type="checkbox"/> Yes
5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	<input type="checkbox"/> Yes
6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	<input type="checkbox"/> Yes
7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	<input type="checkbox"/> Yes
8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.	<input type="checkbox"/> Yes

**The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith.**

**Type or Printed Name of Party Authorized to Sign**

First Name:	MI:	Last Name:	Suffix:
Title:		Customer Name:	
Signature:			Date:
<b>FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.</b>			
<b>WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).</b>			

## Part 2: AMI AGREEMENT

### 1. Equipment.

A. **Purchase of Equipment.** This Section 1(A) only applies if Customer purchases Equipment (as defined below) directly from Sensus. If Customer purchases Equipment from Sensus' authorized distributor, then such purchases and the warranties on such Equipment will be pursuant to terms agreed by Customer and Sensus' authorized distributor ("Customer-Distributor Arrangement") and Section 1(A) does not apply.

- i. **Equipment.** Customer shall purchase from Sensus the quantities and types of Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") set forth in Exhibit E (or in the Quote) at the prices set forth in Exhibit E (or in the Quote).
- ii. **Delivery.** Customer shall pay for delivery of the Equipment from Sensus' or Sensus' contracted manufacturers' factory to Customer's warehouse. All Equipment is shipped Ex Works shipping point, prepay freight and add. Title to, and property in, the Equipment shall pass to Customer upon shipment. Risk of loss of the Equipment shall also pass to Customer upon shipment.
- iii. **Project Number.** Customer shall include the Sensus project number on all Purchase Orders. The project number for this Agreement is set forth on the first page. Orders submitted to Sensus may not be canceled or amended, or deliveries deferred, by Customer except with Sensus' prior written consent.
- iv. **Warranty.** The Equipment purchased directly from Sensus is warranted as set forth in this subsection (ii).
  - (a) Sensus warrants its water metering equipment and gas SmartPoint Modules according to the terms and conditions (including all limitations and exclusions) in the Sensus G-500 warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "G500" link), or 1-800-METER-IT ("G-500 Warranty"). To the extent the terms of the G-500 Warranty conflict with the terms in this Agreement, the terms of this Agreement shall control.
  - (b) Sensus warrants all other goods, software, and services, except for the water metering equipment and gas SmartPoint Modules, according to the terms and conditions (including all limitations and exclusions) in the Sensus Limited Warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "General Warranty" link), or 1-800-METER-IT ("General Limited Warranty"). To the extent the terms of the General Limited Warranty conflict with the terms in this Agreement, the terms of this Agreement shall control.
  - (c) The G-500 Warranty and the General Limited Warranty are hereby incorporated by reference as if fully set forth herein.

### B. Network Warranty.

- i. Subject to subsection (ii), if more than the Required RF Field Equipment are required for the AMI System to meet the specifications set forth in Exhibit B of this Agreement, Sensus shall deliver to the Customer the hardware for the additional RF Field Equipment without charge to the Customer, provided that all RF Field Equipment shall be located and installed as directed by Sensus. Notwithstanding anything to the contrary, Customer shall pay for the installation, tower lease fees, and any Ongoing Fees for all equipment provided pursuant to this subsection (i). The Customer shall have title to all equipment provided pursuant to this subsection (i). This subsection (i) shall only apply to the Meter Territory, as defined in subsection (ii). Furthermore, this subsection (i) shall cease one year after the Effective Date, such that after this date, Sensus shall have no obligation to provide RF Field Equipment hardware at no cost, and the Customer will have to purchase such hardware, even if it is necessary to meet the specifications.
- ii. Notwithstanding anything to the contrary, the parties recognize and agree that the RF Field Equipment site design and build is based on the specific metering locations and antenna heights provided to Sensus by the Customer in writing prior to the Effective Date ("Meter Territory"). For clarity, the Meter Territory only contains the individual meter locations and antenna heights specifically provided to Sensus by the Customer in writing prior to the Effective Date. New or different metering locations and/or antenna heights provided after the Effective Date may or may not require additional RF Field Equipment and/or changes to the RF Field Equipment locations. In the event new and/or different RF Field Equipment locations are required to accommodate these new metering sites and/or antennae heights, Customer agrees to: pay Sensus for the additional RF Field Equipment hardware, perform the necessary site preparation, and pay for the necessary installation, tower lease, and ongoing fees for all equipment purchased pursuant to this subsection (ii). Any equipment required pursuant to this subsection (ii) is excluded from the network warranty calculation described in subsection (i).

C. **Limitations and Exclusions.** THE WARRANTIES IN SECTION 1(A)(iv), SECTION 1(B) THE G-500 WARRANTY, AND THE GENERAL LIMITED WARRANTY ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE, AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS

FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

**D. Ongoing Maintenance of Equipment.**

- i. **Field Devices.** Customer shall be responsible for the ongoing maintenance of the Field Devices. Customer shall provide the field services labor to visit a problem Network Device and perform diagnostics and repair or replacement. For electricity products, Customer shall first test and confirm that each socket to which a Network Device will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not "hot", damaged, or otherwise in need of maintenance or repair.
- ii. **RF Field Equipment.** Customer shall be responsible for the ongoing maintenance of the RF Field Equipment. Customer shall be responsible for the ongoing monthly operations and expenses related to the RF Field Equipment, including any leasing costs, construction costs, taxes and costs of WAN Backhaul. Customer shall pay for electric power to the RF Field Equipment.
- iii. **Server Hardware.** Customer shall be responsible for the ongoing maintenance of the Server Hardware. If the Server Hardware is located on Customer's property, Customer shall allow Sensus 24x7x365 remote and physical access to the Server Hardware. Remote access to the Server Hardware must be through a high speed VPN. The high speed VPN shall comply with the requirements indicated by Sensus from time to time.

**2. Services.**

- A. **Installation of Equipment.** This Section 2(a) only applies if Customer purchases Equipment directly from Sensus. If Customer purchases Equipment from Sensus' authorized distributor, then the below services will be pursuant to the Customer-Distributor Arrangement and Section 2(a) does not apply.
  - i. **Generally.** The parties shall have their respective obligations for the deployment and operation of the AMI System as set forth in the Statement of Work attached as Exhibit C. The Statement of Work does not apply if Customer is purchasing Equipment from Sensus' authorized distributor.
  - ii. **Field Devices.** Customer shall install the Field Devices at its End Users' premises, or other location as applicable. For electricity products, Customer shall first test and confirm that each socket to which a Network Device will be connected is in safe operating condition, is fully functional and is not "hot", damaged or otherwise in need of maintenance or repair.
  - iii. **RF Field Equipment.** Sensus shall perform the propagation analysis in the Service Territory to determine where to locate the RF Field Equipment. For the prices set forth in Exhibit E, Sensus, or its subcontractor, shall perform Sensus' obligations in Exhibit C with regards to the RF Field Equipment installation. Customer shall perform Customer's obligations in Exhibit C with regards to the RF Field Equipment installation.
- B. **Software Implementation.** Sensus shall install and configure the Software and shall install the Software on the Server Hardware, at the prices set forth in Exhibit E.
- C. **IT Systems Integration Services.** Integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement.
- D. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit A.
- E. **Project Management.** Project Management of the AMI System is not included in this Agreement.

**3. Software.**

- A. **Software as a Service (SaaS).** Sensus shall provide Customer with Software as a Service, as defined in Exhibit F, ONLY if both: (i) Customer and Sensus have included Software as a Service in this Agreement and the pricing for such services is listed in Exhibit E, and (ii) Customer is current in its payments for such services. If Sensus provides Software as a Service, then subsection (b) shall not apply.
- B. **Software License.** This subsection (b) shall apply if Customer is NOT receiving Software as a Service (as described in subsection (a)).
  - i. **License.**
    - (a) Subject to all the terms and conditions of this Agreement, Sensus hereby grants to Customer for the fee outlined in Exhibit E, a nonexclusive, non-transferable, royalty-bearing license under Sensus' intellectual property rights (the "Software License") to use the Software for the Permitted Use. The Software License is personal to Customer and is nonsublicenseable to Affiliates or other third parties. Customer shall have no rights to the Software other than those expressly granted in this Section; this Software License contains no implied licenses. Customer shall not use the Software other than for the Permitted Use.
    - (b) Subject to all the terms and conditions of this Agreement that are applicable to Software and otherwise, and subject to the terms and conditions in Exhibit D, so long as Customer pays for use of certain Harris

Software, Sensus hereby grants to Customer for the fee outlined in Exhibit E, a nonexclusive, non-transferable, royalty bearing license under Sensus' intellectual property rights (the "Harris Software License") to use the Harris Software solely for the Permitted Use. This Harris Software License is personal to Customer and is nonsublicenseable to Affiliates or other third parties. Customer shall have no rights to the Harris Software other than those expressly granted in this Section; this Harris Software License contains no implied licenses. Customer shall not use the Harris Software other than for the Permitted Use. Customer expressly agrees to the terms and conditions set forth in Exhibit D. For clarity, this subsection (b) shall only apply so long as both; (i) pricing for Harris Software is included in Exhibit E to this Agreement; and (ii) Customer is current in its payments for the Harris Software.

- (c) Except as expressly authorized in accordance with the Permitted Use, Customer shall not (and shall not attempt to): (a) use, copy, adapt, translate, publish, display, sublicense, rent, lease, lend, transfer or distribute the Software, related documentation, or any copy thereof; (b) improve, enhance, revise, modify or make any other derivatives of the Software, related documentation or any copy or part thereof. Customer shall not reverse assemble, reverse compile, reverse engineer or otherwise translate or decode the Software or any part thereof, or any copy thereof. Sensus' suppliers of software and documentation (or any part thereof) are beneficiaries of this provision. Customer shall not destroy, remove or otherwise alter any proprietary notices (including, but not limited to, copyright notices) on the Software or related documentation, or any copy thereof, and agrees to reproduce any such notice(s) on any copy thereof it makes pursuant to this Software License.
- (d) The Software License and the Harris Software License (if applicable) shall commence on the Effective Date and shall terminate immediately when this Agreement expires or is earlier terminated for any reason or if Customer uses the Software or Harris Software (if applicable) other than for the Permitted Use.

- ii. **Access to Software.** Customer shall ensure that only Customer employees and Customer independent contractors who need access to the Software for Customer to obtain the benefits of this Agreement may access it. Customer is liable for ensuring that its employees and independent contractors abide by the terms of this Agreement.
- iii. **Third Party Software.**
  - (a) In addition to the Software, Sensus shall provide Customer with the open source software listed in Exhibit D under the heading "Bundled Third Party Software" (the "Bundled Third Party Software"). Customer acknowledges that it has received the terms and conditions of the Bundled Third Party Software ("Third Party EULAs"). Customer accepts the Third Party EULAs and agrees to comply with the terms of such Third Party EULAs.
  - (b) Exhibit D contains, under the heading "Non-Bundled Third Party Software", certain third party software ("Non-Bundled Third Party Software"). Customer must license the Non-Bundled Third Party Software directly from third party licensors in order to operate the FlexNet System.
  - (c) Customer acknowledges that both the Bundled Third Party Software and the Non-Bundled Third Party Software is subject to various rights and restrictions in favor of or imposed by the licensors thereof and that Customer's use of the Bundled Third Party software and/or Non-Bundled Third Party Software is subject to all such rights and restrictions. Sensus provides no warranty, indemnity nor support of or in relation to any third party software. All such rights and obligations are a matter strictly between Customer and the relevant third party licensors.
- iv. **Support and Maintenance.**
  - (a) For so long as the Customer pays the Ongoing Fees, Sensus shall provide Customer with ongoing software Patches, Updates, ongoing software maintenance and remote telephone support of the Software according to the terms set forth in Exhibit A. Upgrades are not included hereunder and shall be priced separately.
  - (b) Sensus will support and will maintain compatibility with the most recent Release and the two prior Releases ("Previous Releases"). If Customer requires support for versions that were released earlier than the Previous Releases, Customer's Ongoing Fees for software maintenance shall increase by thirty-three percent (33%) per year until Customer upgrades to a supported version of the Software.
- v. **Effect of Termination.** Upon the termination of the Software License, all rights of the Customer to use the Software shall immediately cease and Customer shall promptly remove and return to Sensus all copies of the Software and any related documentation and shall instruct all its employees that further use of the Software is prohibited.

C. **Intellectual Property.** Sensus and/or its supplier (as applicable) shall own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer

agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property.

D. **UCITA.** To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.

4. **Spectrum Lease.**

A. **Definitions in this Section 4.** In this Section 4 only, Spectrum Lease, "Sensus" shall mean Sensus USA, Inc and its wholly owned subsidiary, Sensus Spectrum LLC.

B. **Spectrum Lease.** Sensus hereby grants to Customer and Customer accepts a spectrum manager lease ("Lease") over the frequencies of the FCC License and solely within Customer's Service Area. (The frequencies of the FCC License within Customer's geographic Service Area are called the "Leased Spectrum"). Customer shall pay the fees set forth in Exhibit E for use of the spectrum; if no fees are listed in Exhibit E for use of the spectrum, then Sensus shall partition \$900 from the other Ongoing Fees and such amount is hereby allocated to the spectrum Lease pursuant to this Agreement.

C. **Form 608.** Sensus will file with the Federal Communications Commission (FCC) a FCC Form 608, notification/application for a long term spectrum manager lease. This Lease becomes effective when the FCC receives the notification.

D. **Lease Application.** In order to complete the FCC lease application, Customer will:

- i. Complete and sign the representations on pages two (2) through four (4) of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
- ii. Give Sensus the coordinates of the boundaries of Customer's Service Area or, alternatively, approve Sensus' estimation of the same.
- iii. In the event that Customer does not already have one, Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
- iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.

E. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Area and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.

F. **Term of Spectrum Lease.** Unless terminated earlier (because for example Customer stopped using the FlexNet equipment), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and Customer's underlying agreement with Sensus and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.

G. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; or (c) upon Customer's breach of this Agreement.

H. **FCC Compliance.** The following FCC requirements apply

- i. Pursuant to 47 CFR 1.9040(a);
  - (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
  - (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
  - (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
  - (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
  - (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
- ii. Pursuant to the standards set forth in 47 CFR 1.9010, Sensus retains *de facto* control over the applicable radio facilities, including that,

- (a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and
- (b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.

- I. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.

## 5. General Terms and Conditions.

- A. **Payment.** All payment and pricing is subject to the terms in Exhibit E.
- B. **Limitation of Liability.**
  - i. Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by Customer directly to Sensus under this Agreement. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise.
  - ii. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (iv) manual meter read costs and expenses; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure.
  - iii. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
  - iv. To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
- C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and Customer's obligations hereunder shall cease and the software as a service/software license and spectrum lease shall immediately cease.
- D. **Force Majeure.** If Sensus becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. Sensus will take reasonable steps to mitigate the Force Majeure. "Force Majeure" means an event beyond the reasonable control of Sensus, including acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- E. **Intellectual Property.** No Intellectual Property is assigned to Customer hereunder. Sensus shall own or continue to own all Intellectual Property used, created, and/or derived in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Equipment purchased or provided hereunder. "Intellectual Property" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings,

designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

- F. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "Confidential Information" means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- G. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
- H. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- I. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
- J. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("Disputes") shall first be resolved by the Parties attempting mediation in Delaware. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in Delaware. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- K. **Restriction on Discovery.** The Parties acknowledge the abundance of documents, data, and other information stored in an electronic manner and the time and costs associated with retrieving relevant electronic data from the Parties during the Discovery portion of a claim. Accordingly, the Parties shall utilize only printed or hard-copy documents, data, and other information in Discovery and shall not use or request electronic or e-Discovery methods for any claim, demand, arbitration or litigation subject to this Agreement. All relevant and unprivileged printed or hard-copy materials shall be subject to Discovery, but neither Party has an obligation to maintain printed or hard-copy files in anticipation of a claim, demand, litigation, or arbitration proceeding.
- L. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- M. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- N. **Four Corners.** This written Agreement represents the entire understanding between and obligations of the Parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the Parties. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations of Sensus are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement.
- O. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.

6. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

- A. "**Affiliate**" of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
- B. "**AMI System**" identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- C. "**Available Meter**" means an installed Sensus FlexNet meter or a Sensus SmartPoint Module which has been installed on a third party meter, and which, in either case, is not an Unavailable Meter (or on an Unavailable Meter in the case of SmartPoint Modules on third party meters) and which satisfies all of the following criteria:
  - i. it functions properly, is powered and is not a damaged or failed meter;
  - ii. it is in a deployment area of meters for Customer such that a sufficient number of two-way meters are in range of each other;
  - iii. it is serviced by a tower FlexNet Base Station or Echo Transceiver or Remote Transceiver that has not been subjected to a power failure greater than eight (8) total hours;
  - iv. neither it nor the FlexNet Base Station, Echo Transceiver or any other network equipment that serves that meter has been affected by a Force Majeure event;
  - v. illegal or unauthorized jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter;
  - vi. it is installed in the Service Territory;
  - vii. it has not been reported to Customer under Sensus' or Customer's preventative maintenance;
  - viii. its functioning or performance has not been adversely affected by a failure of Customer to perform its obligations or tasks for which it is responsible under this Agreement, including, but not limited to, testing and confirming that the socket to which the meter will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not "hot", damaged, or otherwise in need of maintenance or repair;
  - ix. its functioning or performance has not been adversely affected by a failure or insufficiency of the back haul telecommunications network of Customer for communications among the components of the Sensus AMI System; and
  - x. it has been installed in compliance with the procedures and specifications approved by Customer and Sensus.
- D. "**Billing Window**" for a meter means the four day period commencing one day prior to the relevant billing day for such meter and ending two days after such billing day. The Billing Window for testing purposes shall be agreed by Customer and Sensus.
- E. "**CPI**" means the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) "All Items Less Food and Energy" for the U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index. Any CPI increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%).
- F. "**DA Devices**" identifies RTMs and RTUs.
- G. "**DA Software**" identifies the Sensus software listed in Exhibit D under the heading "DA Software" and any Patches, Updates, Upgrades that are provided to Customer pursuant to the terms of this Agreement ONLY TO THE EXTENT (i) pricing for the DA Software is specifically included in Exhibit D to this Agreement; and (ii) Customer is current in its payments for DA Software.
- H. "**Echo Transceiver**" identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
- I. "**End User**" means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.
- J. "**Escalator(s)**" means the following:
  - i. **For Water Meters:**
    - (a) **For bronze and low lead water metering products:** the percentage change, for the relevant period, of the average of; (a) the United States Bureau of Labor Statistics Producer Price Index, Commodities, Group: Metals and metal products, Item: Copper and copper-base alloy castings (excl. die-castings), series ID: WPU102807013, not seasonally adjusted; and (b) the United States Bureau of Labor Statistics Producer Price Index, Industry Data, Industry and Product: Plastics material and resins mfg., series ID: PCU 325211325211, not seasonally adjusted
    - (b) **For plastic main case meters:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Producer Price Index, Industry Data, Industry and Product: Plastics material and resins mfg., series ID: PCU 325211325211, not seasonally adjusted.
    - (c) **For Omni meters:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Producer Price Index, Commodities, Group: Metals and metal products, item: other gray and ductile iron castings, other, series ID: WPU101504, not seasonally adjusted.
  - ii. **For all other goods and services:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) "All Items Less Food and Energy" for the

U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index.

iii. Any Escalator increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%)

K. **"Field Devices"** means the meters, SmartPoint Modules, and DA Devices (if applicable).

L. **"FlexNet Base Station"** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.

M. **"FlexWare™ Software"** identifies the Sensus software listed in Exhibit E under the heading "FlexWare™ Software" and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.

N. **"Harris Software"** means the software listed in Exhibit E under the heading "Harris Software" ONLY TO THE EXTENT (i) pricing for the Harris Software is specifically included in Exhibit D to this Agreement; and (ii) Customer is current in its payments for Harris Software

O. **"In/Out Costs"** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.

P. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

Q. **"LCM"** identifies the load control modules.

R. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer during the Term as set forth on Exhibit E.

S. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.

T. **"Permitted Use"** means only for reading Customer's meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.

U. **"Release"** means both Updates and Upgrades.

V. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.

W. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.

X. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.

Y. **"RTMs"** identifies the remote telemetry modules.

Z. **"RTUs"** identifies remote telemetry unit.

AA. **"Service Territory"** identifies the geographic area where Customer provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described in the parties' spectrum lease filing with the FCC.

BB. **"Server Hardware"** means the RNI hardware.

CC. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.

DD. **"Software"** means the Sensus software listed in Exhibit D under the heading "Sensus Software List" and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.

EE. **"TouchCoupler Unit"** identifies an inductive coupler connection from a water register to the SmartPoint Module.

FF. **"Unavailable Meters"** include meters with sockets with power cut at the pole, meters that are booted on the line side, sockets that are not provided power due to a power delivery system failure, meters with tamper, theft or other human induced failures that render the meter or SmartPoint Module incapable of providing a read, a Force Majeure event induced failures of the power delivery system, socket or meter, and/or any system or meter maintenance issue that precludes the meter from transmitting its message to the network. Examples of Unavailable Meters include:

- i. Cut At Pole: a meter for which power has been turned off to the socket by Customer.
- ii. Booted on Line Side: nominally a meter for which power has been turned off by placing "boots" in the socket from which the power to the meter has effectively been turned off.
- iii. Failed or flawed power delivery to the meter socket: Customer power generation, distribution or delivery system failure that has effectively turned off power to the socket and/or meter.
- iv. Tampered Meters: sockets, meters or distribution assets that have been modified by unauthorized personnel rendering the meter incapable of providing accurate usage readings from that meter.
- v. Broken TouchCoupler unit: the TouchCoupler unit is damaged by intentional or unintentional acts.
- vi. Broken Clip: the clip that holds the TouchCoupler unit into the radio package housing is broken and the unit can not complete the inductive electrical connection.

- vii. Improper installation of the TouchCoupler unit: the TouchCoupler unit is not pushed all the way into the housing clip causing the unit to not be able to complete the inductive electrical connection.
- viii. Unit not installed through the pit lid: the unit is not installed with the antenna positioned through the pit lid and properly secured with the retaining nut. The radio unit must also be securely attached to the antenna section.
- ix. Radio unit not securely attached to the Antenna unit: The water-proof SmartPoint Module housing is not properly installed and secured to the antenna unit.
- x. Damaged antenna: the unit's antenna is damaged by intentional or unintentional acts.
- xi. Damaged radio package: the unit's water-proof radio package is damaged by intentional or unintentional acts.
- xii. Data Base errors: the unit is removed from the system but not updated in the database. Still shown as in the system when in fact has been removed.
- xiii. Phantom Units: the unit is removed from the system but is still transmitting and being heard by the system.
- xiv. Other Installation Defect: the unit is otherwise installed improperly so that it does not communicate with the FlexNet Base Station.

GG. "***Updates***" means releases of the Software that constitute a minor improvement in functionality.

HH. "***Upgrades***" means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.

II. "***WAN Backhaul***" means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

## Exhibit A

### Technical Support

#### 1. **Introduction**

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

#### 2. **Support Categories**

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products and Sensus Lighting Control.
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

#### 3. **Support Hours**

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00AM EST to 6:00PM EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

#### 4. **Support Procedures**

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Support ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state in which the call originated. The nature of the problem and severity levels will be agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into a support ticket for creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

##### Severity Levels Description:

**Sev1** Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM).

**Sev2** Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

**Sev3** The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

**Sev4** Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.

4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-serve basis. A first level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.

- a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
- b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.
- c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Support system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

## 5. Response and Resolution Targets.

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction.	<ul style="list-style-type: none"><li>• Satisfactory workaround is provided.</li><li>• Program patch is provided.</li><li>• Fix incorporated into future release.</li><li>• Fix or workaround incorporated into the Support Knowledge Base.</li></ul>
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur.	<ul style="list-style-type: none"><li>• Satisfactory workaround is provided.</li><li>• Program patch is provided.</li><li>• Fix incorporated into future release.</li><li>• Fix or workaround incorporated into the Support Knowledge Base.</li></ul>
3	1 Business Day	90 business days	<ul style="list-style-type: none"><li>• Answer to question is provided.</li><li>• Satisfactory workaround is provided.</li><li>• Fix or workaround incorporated into the Support Knowledge Base.</li><li>• Fix incorporated into future release.</li></ul>
4	2 Business Days	12 months	<ul style="list-style-type: none"><li>• Answer to question is provided.</li><li>• Fix or workaround incorporated into the Support Knowledge Base.</li></ul>

## 6. Problem Escalation Process.

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
  - 6.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
  - 6.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
  - 6.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

## 7. General Support Provisions and Exclusions.

- 7.1. A Dell-provided three-year ProSupport hardware service plan plus a 4 hour "Mission Critical" upgrade accompanies the server/system hardware that Sensus procures on behalf of the customer. Sensus does not warrant third party server hardware. The customer may renew the ProSupport service plan directly with Dell. The "Dell Master Services Agreement" and "Pro Support for IT Services Description" documents may be found at [www.dell.com/service contracts](http://www.dell.com/service contracts).
- 7.2. Sensus procures certain third party software licenses (e.g. Red Hat Enterprise Linux) required to operate the FlexNet-based applications on the Dell hardware. Sensus registers all the applicable third party software licenses in the customer's name and ships all documentation and licensing information to the customer with the server. The customer is responsible for maintaining all third party software licenses.
- 7.3. In the event of a server hardware failure at the customer site, Sensus will provide replacement Sensus proprietary software (e.g., FlexWare) either on digital media or downloadable from an internet site, as necessary. The method of software redistribution is at Sensus' discretion. The customer is responsible for re-installing the replacement software. Sensus installation support is not covered under this standard Technical Support program but may be provided as a fee-based service.
- 7.4. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). All Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall customer experiences. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.5. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.

## **Exhibit B**

### **System Acceptance Test**

#### **Objective**

The objective of the System Acceptance Test is to verify that the AMI System will operate and meet or exceed the criteria set forth in this Exhibit. All capitalized words not defined in this Exhibit shall have the meaning set forth in the Agreement to which this Exhibit is attached. The System Acceptance Test shall consist of the Test Equipment and such additional goods as set forth below. “Test Equipment” means the number of RF Field Equipment and RNIs set forth in the propagation study completed by Sensus. The parties will jointly administer the System Acceptance Test. Customer may choose to waive testing of any requirement if it believes that such testing is unnecessary. Should any specific test be waived, such test shall be deemed to have passed. For clarity, the tests in this exhibit are one-time tests, meaning that once the system or route (as applicable) passes the test, there is no need or obligation to retest or to satisfy the obligations below multiple times.

The System Acceptance Test shall consist of the below listed tests, only to the extent the below tests are applicable (for example, the Gas Acceptance Test is not applicable if the Customer has not purchased gas SmartPoint Modules from Sensus or Sensus’ authorized distributor). For clarity, the software license and spectrum lease can only be used for the Permitted Use.

1. Electricity Acceptance Test
2. Water Acceptance Test
3. Gas Acceptance Test

For all tests below, Sensus will calculate the applicable performance requirements using the existing software features within the AMI System. Unless stated otherwise below, any disputes regarding the performance of the AMI System shall be settled using printouts of meter read data from the RNI’s database (“RNI Database”).

#### **1. Electricity Acceptance Test**

After the Effective Date, Customer shall deploy the Test Equipment and a agreed number of Sensus electricity meters (“Electricity Test Meters”), all installed in agreed locations within Customer’s Service Territory (collectively, the “Electricity Deployment”). The number of Electricity Test Meters and locations shall be agreed by Customer and Sensus. Customer shall send written notice to Sensus after the Electricity Deployment is complete. Such notice shall indicate the date on which the Electricity Deployment is completed.

Within thirty (30) days after Electricity Deployment, the parties shall begin the Electricity Acceptance Test on the Electricity Test Meters. The tests in this section shall only be conducted on Electricity Test Meters, which only include deployed electricity Available Meters. Customer and Sensus will work in good faith to complete the Electricity Acceptance Test no later than ninety (90) days after commencement of testing. The Electricity Acceptance Test shall consist of the following subtests listed under “Sub-Test Specifications.” Upon satisfactory completion of each of the tests, the AMI System will be deemed to have passed the Electricity Acceptance Test. Notwithstanding anything to the contrary, the Electricity Acceptance Test shall be deemed completed and passed in its entirety no later than three (3) years after the Effective Date. Each test is described in detail below.

#### **Sub-Test Specifications**

##### **A. Electricity Read Success.**

The Electricity Read Success will test whether Available Meters deliver billing meter reads within the Billing Window. Electricity Read Success shall only include Electricity Test Meters that are Available Meters throughout the entire Billing Window. This test is achieved when Electricity Read Success reaches a level of 98.5% successful reads during a Billing Window that is based on an agreed billing day.

$$\text{Electricity Read Success} = 100 \times ((\text{number of Electricity Test Meters read during the Billing Window}) / (\text{Electricity Test Meter population})).$$

If Electricity Read Success is equal or greater than 98.5, then Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the Electricity Read Success test, such notice shall specify the date on which the test is completed.

**B. *On Demand Read.***

The purpose of On Demand Read is to test whether Available Meters provide an on demand read within an average of ninety (90) seconds of the request time. On Demand Read shall only include Electricity Test Meters that are Available Meters throughout the entire On Demand Read test period. This test is achieved when the agreed statistical sample of Electricity Test Meters responds to an on demand read request within an average of ninety (90) seconds of the request. The statistical sample shall be agreed by Customer and Sensus.

To perform the test, Customer shall request one on demand read from each Electricity Test Meter in the statistical sample one time, at times agreed by the parties. The times shall be agreed by Customer and Sensus. Customer shall time the Electricity Test Meter's response to the request. The parties shall complete this sub-test no later than two days after commencement.

*Average On Demand Read = (total response time to the on demand read request for all Electricity Test Meters in the statistical sample) / (total number of Electricity Test Meters within the agreed statistical sample).*

If Average On Demand Read is equal or less than ninety (90) seconds, then Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the On Demand Read test, such notice shall specify the date on which the test is completed.

**Completion of Electricity Acceptance Test**

Each of the above tests shall be successfully completed or waived for the Electricity Acceptance Test to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, Customer shall promptly issue written notice to Sensus. Such notice shall state that Sensus has successfully completed the Electricity Acceptance Test and the notice shall state the date on which the Electricity Acceptance Test was completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the parties shall re-perform the failed tests.

Sensus has no obligation to continue optimizing the system and meeting performance specifications upon the earlier of (a) completion of the Electricity Acceptance Test, (b) the three year anniversary of the Effective Date; or (c) the termination or expiration of this Agreement.

## **2. Water Acceptance Test**

The objective of Water Acceptance Test is to verify that the water meters and water SmartPoint Modules in the AMI System, when actually installed in specific, agreed reading routes (each a “Route”), will operate and meet or exceed the criteria set forth below. The Routes shall be agreed by Customer and Sensus. The test is intended to provide incremental acceptance of distinctly defined geographical areas and populations of meters. Each Route shall contain a statistical sample of water Available Meters (“Water Route Units”). Water Route Units only includes the water Available Meters installed in the applicable Route.

Before beginning the Water Acceptance Test, the Test Equipment must be installed in locations defined in the propagation study. Additionally, all Water Route Units must be installed. Customer shall send written notice to Sensus once all Water Route Units are installed (“Water Deployment Date”).

Within thirty (30) days after the Water Deployment Date, the parties shall begin the Water Acceptance Test on the Water Route Units. Customer and Sensus shall work in good faith to complete the Water Acceptance Test no later than thirty (30) days after commencement of testing. The tests in this section shall only be conducted on Water Route Units, which only include deployed water Available Meters. Notwithstanding anything to the contrary, the Water Acceptance Test shall be deemed completed and passed in its entirety no later than three (3) years after the Effective Date.

### **Testing Specifications - Water Read Success**

The Water Read Success will test whether water Available Meters deliver billing reads to the FlexNet Base Station within the Billing Window. Water Read Success shall only include Water Route Units that are Available Meters throughout the entire Billing Window. Water Read Success only measures reads sent from the Water Route Unit to the FlexNet Base Station; it does not include on demand reads. This test is achieved when Water Read Success reaches a level of 98.5% successful reads during an agreed upon Billing Window. The Billing Window shall be agreed by Customer and Sensus.

$$\text{Water Read Success} = 100 \times ((\text{number of Water Route Units read during the Billing Window}) / (\text{Water Route Units population})).$$

If Water Read Success is equal or greater than 98.5, then Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the Water Read Success test for the applicable Route. Such notice shall specify the applicable Route and shall state the date on which the Water Read Success test was successfully completed. This process shall continue until all Routes have successfully completed the Water Acceptance Test.

### **Completion of Water Acceptance Test**

Once all Routes have successfully completed the Water Acceptance Test, Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the Water Acceptance Test for all Routes. Such notice shall specifically state that the test is successfully completed for all Routes, and shall state the date on which the test was completed for all Routes.

Sensus has no obligation to continue optimizing the system and meeting performance specifications upon the earlier of (a) all Routes successfully completing the Water Acceptance Test; (b) the three year anniversary of the Effective Date; or (c) the termination or expiration of this Agreement.

### **3. Gas Acceptance Test**

The objective of Gas Acceptance Test is to verify that the gas meters and gas SmartPoint Modules in the AMI System, when actually installed in specific agreed reading routes (each a “Route”), will operate and meet or exceed the criteria set forth below. The Route shall be agreed by Customer and Sensus. The test is intended to provide incremental acceptance of distinctly defined geographical areas and populations of meters. Each Route shall contain a statistical sample of gas Available Meters (“Gas Route Units”). Gas Route Units only includes the gas Available Meters installed in the applicable Route.

Before beginning the Gas Acceptance Test, the Test Equipment must be installed in locations defined in the propagation study. Additionally, all Gas Route Units must be installed. Customer shall send written notice to Sensus once all Gas Route Units are installed (“Gas Deployment Date”).

Within thirty (30) days after the Gas Deployment Date, the parties shall begin the Gas Acceptance Test on the Gas Route Units. Customer and Sensus shall work in good faith to complete the Gas Acceptance Test no later than thirty (30) days after commencement of testing. The tests in this section shall only be conducted on Gas Route Units, which only include deployed Gas Available Meters. Notwithstanding anything to the contrary, the Gas Acceptance Test shall be deemed completed and passed in its entirety no later than three (3) years after the Effective Date.

#### **Testing Specifications - Gas Read Success**

The Gas Read Success will test whether gas Available Meters deliver billing reads to the FlexNet Base Station within the Billing Window. Gas Read Success shall only include Gas Route Units that are Available Meters throughout the entire Billing Window. Gas Read Success only measures reads sent from the Gas Route Unit to the FlexNet Base Station; it does not include on demand reads. This test is achieved when Gas Read Success reaches a level of 98.5% successful reads during a agreed upon Billing Window. The Billing Window shall be agreed by Customer and Sensus.

$$\text{Gas Read Success} = 100 \times ((\text{number of Gas Route Units read during the Billing Window}) / (\text{Gas Route Units population})).$$

If Gas Read Success is equal or greater than 98.5, then Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the Gas Read Success test for the applicable Route. Such notice shall specify the applicable Route and shall state the date on which the Gas Read Success test was successfully completed. This process shall continue until all Routes have successfully completed the Gas Acceptance Test.

#### **Completion of Gas Acceptance Test**

Once all Routes have successfully completed the Gas Acceptance Test, Customer shall promptly issue written notice to Sensus that Sensus has successfully completed the Gas Acceptance Test for all Routes. Such notice shall specifically state that the test is successfully completed for all Routes, and shall state the date on which the test was completed for all Routes. Sensus has no obligation to continue optimizing the system and meeting performance specifications upon the earlier of (a) all Routes successfully completing the Gas Acceptance Test; (b) the three year anniversary of the Effective Date; or (c) the termination or expiration of this Agreement.

#### **Results**

The applicable above tests shall be successfully completed or waived for the System Acceptance Test to be satisfied. Upon successful completion of each of the applicable above described tests, or waiver thereof, System Acceptance is deemed to have occurred, and Customer shall promptly issue written notice to Sensus of System Acceptance. Such notice shall state the date on which Sensus successfully completed the System Acceptance Test.

If Sensus does not successfully complete any one of the applicable above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the parties shall re-perform the failed test(s).

## **Exhibit C** **Statement of Work**

This Exhibit C only applies if Customer purchases Equipment directly from Sensus.

### **I. General Responsibilities.**

#### **a. Sensus will:**

1. Conduct a propagation study to determine the locations best suited for installation of the FlexNet Base Stations and to ensure proper communications with end point transmitters and the RNI.

#### **b. Customer will:**

1. Provide a key point of contact to work with Sensus to help facilitate a timely installation of the FlexNet system.
2. Provide Sensus a map of its Service Territory with latitude and longitude ("lat/lon") coordinates of its Service Territory boundaries, a list of meter locations, and a list of preferred Customer tower locations.
3. Work with Sensus to develop a shipping schedule to include network and metering components for the Sensus AMI System. The shipping schedule will be updated at least quarterly, but may be updated on a more frequent basis as implementation proceeds. The shipping schedule shall identify each geographic area of the deployment, the specific locations of meters (street addresses and/or lat/lon if available) in that area, and the estimated date of installation in that area. The plan shall estimate the number of meters by Sensus part number and form type to be installed for each quarter of the project until completion.
4. Be responsible for monthly fees associated with the network access for all sites where network access is needed.
5. Provide communications link (high speed DSL is preferred) between the RNI and the FlexNet Base Station. One of the following should be used to access these components: (i) Cisco VPN; (ii) Open VPN Connection; or (iii) SSH access via port 22 to Linux NC. If Customer is providing SSH access, Port 22 on the firewall must be opened and redirected to the internal IP address of the Sensus RNI.
6. Purchase any routers, hubs, mounting equipment, uninterruptible power supply and/or security equipment needed to connect the RNI to Customer's internal network.
7. Be responsible for the payment of any taxes, renewal, regulatory or license fees associated with the network hardware and software.
8. Be responsible for applying for and purchasing any needed work permits.

### **II. RNI Responsibilities.** This "RNI Responsibilities" section does not apply if: (i) Customer and Sensus have included Software as a Service in this Agreement and the pricing for such services is listed in Exhibit E; and (ii) Customer is current in its payment for such services.

#### **a. Sensus will:**

1. Install the RNI software. Customer is responsible for supplying server hardware.
2. Supply and configure the RNI software and data management software necessary to operate on the AMI system.
3. Stage all Software and configure the RNI software for operation with the AMI System.
4. Install the RNI software, test, and verify proper network connectivity to access the FlexNet Base Station.
5. Commission the RNI software and provide setup and configuration of the RNI software and manage the RNI installation at the Customer's location.

#### **b. Customer will:**

1. Purchase all needed RNI server hardware equipment.
2. Provide a location for the RNI hardware servers. The Sensus RNI must be placed behind Customer's firewall.
3. Provide a cabinet to house the server hardware when rack space is not available.
4. Provide network cabling from server hardware to a network router.
5. Be responsible for fees associated with acquiring and maintaining the static IP addresses needed to access network equipment located at the FlexNet Base Station site.
6. Provide the necessary static IP addresses for the AMI System components.

7. Provide a power source for the RNI hardware equipment.
8. Connect the data management software to the billing system which allows for data to be imported for billing purposes.
9. Allow a minimum of thirty (30) to forty-five (45) days from the time the FlexNet Base Station, RNI and sufficient endpoints have been operational before requiring that data be used for billing purposes.
10. Provide any necessary equipment for software system data backup.
11. Perform software system backup on a regular basis as recommended by Sensus.
12. Be responsible for the FlexWare Software application provided for the exclusive use of the AMI System. Customer cannot add, and/or delete applications within the FlexWare Software or the servers that house the software without the prior, written approval of Sensus.
13. Provide 24x7x365 high speed VPN connection to the RNI computer and FlexNet Base Station network to authorized Sensus AMR Technical Services personnel for the purpose of performing system maintenance, troubleshooting and system monitoring (if Customer prefers, they can require that Sensus personnel coordinate with them to have a remote login port opened only during the period Sensus requires access)
14. Provide two (2) available network ports on Customer's Local Area Network (LAN)
15. Provide two (2) static IP addresses (Linux and Windows servers) within Customer's LAN subnet to support Sensus RNI

### **III. FlexNet Base Station Site Responsibilities**

#### **a. Sensus will:**

1. Determine the correct FlexNet Base Station configuration for the project. FlexNet Base Stations are available in three configurations: indoor, outdoor and rack mounted.
2. Identify and hire a qualified installation team to install and commission the FlexNet Base Station equipment and make final end connections to the equipment for an agreed upon installation fee.
3. Provide the FlexNet Base Station and antennae sufficient to receive meter data and provide the meter data to the RNI via Customer's provided network.
4. Provide the following equipment for the FlexNet Base Station installation: (a) Antel BCD-87010 Omni Directional Antenna or appropriate panel antenna as required, (b) up to 400 feet of 7/8" coaxial cable per FlexNet Base Station location, (c) N/F connectors for 7/8" coaxial cable required for antenna installation connection, (d) jumpers required to attached antenna to coax and to FlexNet Base Station (length of Jumper to be determined by individual site), (e) RF Polyphaser surge current arrestor, (f) grounding Kits for 7/8" coaxial cable, (g) #6 stranded grounding wire for grounding FlexNet Base Station Cabinet, (h) antenna mount and standoff for antenna installation, (i) hoisting grips to install coaxial cable and to support coax cable, (j) equipment required to pickup, transport and install FlexNet Base Station on Platform, and k) one (1) hoisting grip per coax cable and hangars as needed.
5. Have access to a ground field (supplied by Customer) to properly ground the FlexNet Base Station and antenna equipment.
6. Mount the FlexNet Base Station cabinet (if needed) to the structure provided and identified by Customer.
7. Make all data and power terminal, and antennae connections at the FlexNet Base Station Cabinet. This includes the connection from the power source (supplied by Customer) and connection of the CAT 5 data line (supplied by Customer) from the network access point at the site.
8. Provide all strapping hardware needed to run the data and power cables from the base of the FlexNet Base Station site to the antennae if needed.
9. Install the antenna at an agreed-upon location on the antenna structure.
10. Provide and install Andrew 7/8" coaxial cable from each FlexNet Base Station location to antenna mount location. Coax will be installed on the appropriate leg of tower or mounting structure.
11. Provide and install antenna mount with a 3 foot stand-off for the antenna installation.
12. Mount the Sensus provided Antel BCD-87010 or appropriate panel antenna for installation.
13. Install the Sensus provided RF Polyphaser and bond it to the ground buss entry location.
14. Install a 6 foot jumper from polyphaser entry port of FlexNet Base Station duplexer.
15. Ground the FlexNet Base Station to common ground with appropriate #6 ground wire and appropriate ground lugs.

16. Program and commission the FlexNet Base Station for proper operation.
17. Sweep the antenna and coax line to ensure conformance to Sensus' published specifications.
18. Perform drive-by testing to verify coverage.
19. Not be held responsible for damage to any interior/exterior coatings on water tanks that result from welding of antenna mounts to tanks. Parties will agree to a scope of work prior to installation.

**b. Customer will:**

1. Provide an area at the FlexNet Base Station site for installation if the FlexNet Base Station is to be installed at a Customer provided site and prepare the site as follows:
  - A. The site must have a network connection available for the FlexNet Base Station to communicate with RNI. Suggested communications methods are Ethernet, DSL, Microwave and wireless. The Ethernet connector on the FlexNet Base Station unit is an RJ-45 type, 10/100 auto signaling rate. Minimum WAN bandwidth requirements are 128 kbps with a redundant path. Any network equipment to interface the FlexNet Base Station such as Juniper router / firewall, switches, etc. will be Customer provided.
  - B. Customer will supply connectivity information to Sensus (IP address, default gateway, sub-net mask, etc.).
  - C. Provide suitable antenna mounting structure such as a tower, mono-pole, or building that is capable of supporting the weight of the antenna, cable, mounting hardware and wind loading.
  - D. An Indoor site should have adequate room for the rack facilitating opening of both front and rear doors, and an available 120V grounded outlet within 10 feet.
  - E. An Outdoor site installation single phase 240 VAC 30 amp circuit from Meter bank to disconnect panel on FlexNet Base Station.
  - F. An Outdoor site shall have installation of FlexNet Base Station concrete support pad or suitable steel support structure with a minimum loading capacity of 600lb./ sq.inch.
  - G. An Indoor site should have adequate environmental control/ventilation. Recommended environmental ranges are shown in Appendix A of the Tower Gateway Base Station Installation Manual. Although the unit is capable of operation in extreme temperatures, maintaining a moderate and constant temperature environment will promote trouble-free service and long life.
  - H. The site must have all RF and power connections properly surge arrested to prevent damage in the event of a major lightning strike. A Halo type building ground installation with a tie available to connect to the rack ground bar is recommended; Motorola R-85 grounding specification preferred.
  - I. Customer to supply a cable bridge between the antenna mounting structure and the indoor/outdoor FlexNet Base Station site if and as needed.
  - J. For each outdoor basestation that is required at your location, you are responsible to provide two (2) additional ports on your LAN and one (1) additional port for each indoor basestation
2. Provide the necessary trenching of the power line, conduit, and cabling needed to supply power from the power source outlet to the base station cabinet. All electrical equipment will be installed in accordance with local codes.
3. Provide network access at the site where the FlexNet Base Station is to be installed. Customer should consult with a Sensus representative regarding the available options for network connections between FlexNet Base Station and RNI.
4. Provide CAT 5 UV and weather resistant network cable from the network service provider access link to the cabinet.
5. Provide any conduit or trenching needed to run the data cable to the FlexNet Base Station. Customer is responsible to assure that data cable is located within 1 foot of the final location of the FlexNet Base Station.
6. Provide padlocks at each FlexNet Base Station location for security purposes.
7. Install grounding material at the location of the FlexNet Base Station installation. At a minimum, the material should consist of # 4 or #2 stranded copper wire which will connect to the FlexNet Base Station.
8. Provide access to a proper ground field at the FlexNet Base Station site to enable Sensus to properly ground the FlexNet Base Station and antenna equipment.
9. Be responsible for getting access/permission to any structure that is not owned by Customer.

#### **IV. Echo Transceiver / Remote Transceiver Responsibilities**

##### **a. Sensus will:**

1. Provide mounting brackets for installation.
2. Identify the optimum location to install the Echo Transceiver/Remote Transceiver and communicate those locations to Customer.
3. Echo Transceiver/Remote Transceiver locations will be identified only after sufficient FlexNet Base Stations and endpoints have been installed and it is apparent that additional infrastructure in the form of Echo Transceivers/Remote Transceivers is required to optimize system performance.

##### **b. Customer will:**

1. Provide a 120 VAC power source and cable run, in compliance with local code, to the point where each Echo Transceiver/Remote Transceiver will be installed to supply all necessary power requirements. These boxes can be installed on top of poles, buildings, etc. For such cable runs, 18 AWG UV and weather resistant power cable for runs less than 470 ft. and 16 AWG for runs less than 750 ft. are needed.
2. Install the Echo Transceiver/Remote Transceiver units and ancillary equipment necessary to a structure.
3. Initiate, coordinate and acquire authorization for installation crews to climb poles, buildings and other structures necessary to safely affix cable runs as needed for the installation of the Echo Transceivers/Remote Transceivers.
4. Provide adequate electricity to the Echo Transceiver/Remote Transceiver locations and be responsible for any and all recurring electricity charges for Echo Transceiver/Remote Transceiver operations.
5. Be responsible for on-going maintenance and support of the equipment after installation.

#### **V. Endpoints & Field Installation Responsibilities**

##### **a. Customer will:**

1. Purchase Endpoints. "Endpoint", in this Exhibit only, means a Sensus meter or a Sensus SmartPoint Module installed on a third party meter.
2. Customer is responsible for the safe installation of the Endpoints. For electricity products, Customer shall first test and confirm that each socket to which a Network Device will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not "hot", damaged, or otherwise in need of maintenance or repair.
3. Install or hire a qualified installation contractor to install all Endpoints to be used in the AMI System.
4. Be responsible for quality assurance for their personnel and/or an installation contractor as it relates to proper installation of Endpoints.
5. Visit and troubleshoot Endpoints that are not reporting into the system. Investigate any non-reporting Endpoints to ensure that there are no cut wires, improper installations, improper programming and resolve all data entry errors in the system.
6. Assign an internal and/or installation contractor auditor to ensure installation work is correct. Sensus will train this individual to properly identify and correct any known problems in the field. This individual will be the primary contact to troubleshoot, identify and correct non reporting Endpoints and installation errors.
7. Once the installer has completed troubleshooting of installation issues, Sensus will investigate the remaining Endpoints to identify and fix any coverage issues.
8. Coordinate with Sensus to establish the Endpoints installation schedule, shipment quantities, and overall project timeline.
9. Be responsible to rent or purchase approved handheld programming devices in sufficient quantities to meet the demands of the installers.

**Exhibit D**  
**Software Listing**

THIRD PARTY SOFTWARE		
	Software	Version
<b>BUNDLED THIRD PARTY SOFTWARE</b>	Apache Tomcat	Version 5.5.23
	Apache Camel	Version 2.5
	Geos	Version 2.2.3-1
	Java	Version 1.6.20
	JMS/Active MQ	Version 5.4.2
	Ntpd	Version 3.9
	Open LDAP	Version 2.3.43-3
	Open SSH	Version 4.4
	Open SSL	Version 0.9.8e-7
	Perl	Version 5.8.8
	PostgreSQL	Version 8.4
	Spring Framework	Version 3.0.5
	Apache HTTP Server	Version 2.2.3
	copSSH	Version 2.1.0
	cURL	Version 7.15.5-2
	PostGIS	Version 1.3.5-1
	Sarissa	Version 0.9.7.1
	ImageMagick	Version 6.2.8.0-4
	Ghostscript	Version 8.15.2-9.4
<b>NON- BUNDLED THIRD PARTY SOFTWARE</b>	Database: Oracle OR MS SQL Server	Oracle 11g MS SQL Enterprise 2008 R2
	MS Windows Server 2003 (Stats)	Enterprise Edition (64 bit installation)
	MS Windows Server 2008 (Database/Parser)	Enterprise Edition (64 bit installation)
	RedHat Linux	RedHat Enterprise Linux AS 5.8.Premium Edition
	Big Brother or HP Open View	Version 3.1 Version 7.51 or newer
	Red Gate SQL Backup or Veritas Netbackup	Standard Edition Version 6.0 or newer
	Google Earth	Version 4.1 or newer
SENSUS SOFTWARE LIST		
	Software	Version
<b>FLEXWARE™ SOFTWARE</b>	Sensus RNI	Version 3.1
	FlexNet Base Station Software	Version 100120
<b>DA SOFTWARE</b>	PowerVista™ Application	Customer will only have a license to the DA Software ONLY TO THE EXTENT (i) pricing for the specific item of DA Software is specifically included in Exhibit D to this Agreement; and (ii) Customer is current in its payments for that specific item of DA Software
	SCADA-Xchange™ Software	
HARRIS SOFTWARE LIST		
MeterSense MDM (Logic)	Customer will only have a license to the Harris Software ONLY TO THE EXTENT (i) pricing for the specific item of Harris Software is specifically included in Exhibit D to this Agreement; and (ii) Customer is current in its payments for that specific item of Harris Software	
Rules Editor		
Outage Supervision		
Advanced Reporting		
Distribution Optimization		
Customer & Home Connect		
Weather Data Interface		
Interface to Customer Information System (CIS)		
Interface to Geographic Information System (GIS)		
Supervisory Control and Data Acquisition (SCADA) Integration		

**If Sensus is providing Customer with a license to use Harris Software, Customer agrees to the following:**

Customer License Agreement

1. No license is given to the Customer for the source code to the Harris Software. The Customer agrees that it will not attempt to derive, or permit or help others to derive the source code relating to the Harris Software or attempt to otherwise convert or alter the Harris Software into human readable code. The Customer further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the source code relating to the Harris Software.
2. The Customer shall have no right to modify the Harris Software supplied by Sensus for Customer's use under this Customer License Agreement without the prior written approval and direction of Sensus and Harris.
3. Customer shall not sublicense or permit the sublicense of any of the rights granted to the Customer related to the Harris Software.
4. The Customer agrees that it will not, except as otherwise expressly provided in this Customer License Agreement or except as dictated by Customer's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Harris Software or other proprietary information in any form.
5. The Customer will ensure that the Universal Copyright Convention symbol and other copyright and proprietary notices of Harris will remain on the Harris Software in machine-readable form.
6. The Customer will take the same care to safeguard the Harris Software as it takes to safeguard its own confidential information and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
7. No third party, other than duly authorized agents or employees of the Customer authorized pursuant to the licenses issued hereunder, shall have access to or use of the Harris Software.
8. To enable Harris to provide effective support, the Customer shall allow Harris to have remote access to the Harris Software and shall permit Harris to use online diagnostics if required during problem diagnosis

**If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:**

By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription: End User License Agreement:

Red Hat Enterprise Linux [http://www.redhat.com/licenses/rhel\\_rha\\_eula.html](http://www.redhat.com/licenses/rhel_rha_eula.html)

JBoss Enterprise Middleware [http://www.redhat.com/licenses/jboss\\_eula.html](http://www.redhat.com/licenses/jboss_eula.html)

## Exhibit E Pricing

### Section 1.1 Pricing Information

**Escalation.** Customer shall pay for all goods and services rendered by Sensus hereunder at the prices set forth in this Exhibit E or in the Quote referenced on the first page. Such Quote is incorporated into this Exhibit E by reference. The pricing in Exhibit E shall remain firm until the Trigger Date (as defined on the first page of the Agreement). Starting on the Trigger Date, and on each anniversary of the Trigger Date thereafter, the pricing in Exhibit E shall automatically adjust to equal the summation of (i) the amount charged for such pricing component during the immediately preceding year ("Base Amount"); plus (ii) the product of the Base Amount multiplied by the percentage rate of increase in the Escalator(s) during the immediately preceding year (which product shall not be less than zero, such that the pricing in Exhibit E cannot decrease under this section). The Escalator(s) will be calculated utilizing the Escalator(s) published the month prior to the anniversary of the Trigger Date compared to the equivalent month from one year earlier to determine the escalation. For example, if the Trigger Date occurs in January 2015, the Escalator(s) will be calculated by comparing December 2013 and December 2014 figures.

**Equipment.** Invoices for all Field Devices, RF Field Equipment, Server Hardware and any other goods sold by Sensus hereunder shall be delivered along with the relevant goods.

**Third Party Devices.** In cases where Customer requests or requires Sensus to deliver SmartPoint Modules to a third party meter manufacturer (or any other third party), payment for such modules is due within thirty (30) days of the invoice date to such manufacturer or other third party, irrespective of how long it takes such third party to deliver the SmartPoint Modules to Customer.

**Services.** Invoices for Ongoing Fees and services shall be delivered annually or monthly, as applicable, in advance. Invoices for other services shall be delivered upon completion of the applicable service.

**Invoices and Payment.** Customer shall pay all invoices within thirty (30) days of the invoice date. Sensus reserves the right to establish credit limits for Customer and may require full or partial payment prior to shipment of any goods or commencement of any services provided hereunder. All payments shall be made via electronic payment to the account(s) indicated by Sensus from time to time, unless Sensus requests a change in payment methods in writing.

**Late Payments.** Any invoices not disputed in good faith by Customer which Customer does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law (collectively, "Interest Rate").

**Disputed Invoices.** If Customer disputes an invoice, it shall give written notice of the dispute to Sensus within 30 days of the invoice date. If it does not do so, the entire invoice shall be deemed payable without reduction, set off, or claim. If Customer gives written notice of the dispute within the required thirty (30) days, it shall, at such time as the notice is given, pay the undisputed amount of the invoice and the disputed portion shall be resolved by the parties or, if necessary, under the dispute resolution provisions of this Agreement. If it is ultimately determined that some or all of the disputed amount was payable, that amount shall bear interest from the original due date until Customer pays it at the Interest Rate.

**Withholding.** Customer may withhold payment on an invoice for defective goods and services. Payment by Customer of an invoice shall deem Sensus to have fully complied with this Agreement for all goods and services represented in the invoice and with all other terms and conditions of this Agreement prior to the date of such payment.

**Taxes.** All prices quoted are exclusive of federal, state and municipal taxes. Customer shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or the goods, services, licenses, and/or other rights provided to Customer hereunder.

**Delivery and Packaging.** Customer shall pay for delivery of the Equipment from Sensus' or Sensus' contracted manufacturers' factory to Customer's warehouse. Sensus reserves the right to select the manner in which Equipment is packaged. Quoted prices include regular packing. Special requirements for packing will be subject to extra charges. Shipping and completion dates quoted by Sensus are made in good faith but are not guaranteed.

**Address for Purchase Orders.** All purchase orders shall be sent to the address listed below. Sensus may change this address at any time, upon written notice to the Customer (such notice may be provided via email).

Sensus USA Inc.  
PO Box 487  
Uniontown, PA 15401  
Attn Customer Service  
Fax: 800-888-2403  
Email: icon.support@sensus.com

## Exhibit F

### Software as a Service

#### I. Description of Services

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if (i) Customer opts for such services at the prices set forth in the Exhibit E, and (ii) Customer is current in its payments set forth in Exhibit E.

**A. Termination of Software as a Service.** Customer shall have the option at any time after full deployment but before the end of the Term to terminate the Software as a Service by giving Sensus one hundred twenty (120) days prior written notice. Upon delivery of the notice, Customer shall purchase the necessary RNI(s) and shall pay all applicable fees, including any unpaid Software as a Service fees. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate the Software as a Service, Customer acknowledges that; (a) Customer shall purchase the RNI hardware; (b) Sensus will cease to provide the Software as a Service; and (c) the parties will fulfill their respective obligations as set forth in the Statement of Work in Exhibit C

#### B. Software as a Service Definition.

1. **Software as a Service** means only the following services:
  - i. Use of RNI hardware, located at Sensus' or a third party's data center facility (as determined by Sensus), that is necessary to operate the AMI System.
  - ii. Initial training (not to exceed five days) on the use of the AMI System and all product documentation, including any updates to product documentation.
  - iii. Providing Patches, Updates, and Upgrades to latest Sensus FlexWare Software releases.
  - iv. Providing FCC spectrum, pursuant to the terms of the spectrum lease, to operate the AMI System (for USA customers).
  - v. Providing remote firmware maintenance for FlexNet Base Stations and SmartPoint Modules (Customer must provide IP access to each FlexNet Base Station in order to perform secure shell (SSH) functions).
  - vi. Providing certain third party software required to operate the RNI (specifically, Microsoft SQL server, Microsoft Windows Server, Red Hat Linux OS, and other Bundled Software).
  - vii. Providing secure Web portal access to the hosted FlexWare Software application for the Customer (Customer system administrator grants RNI access to authorized Customer personnel as they are added).
  - viii. If requested, submitting a "daily reading file" in standard file format containing hourly consumption reads and all available alarms collected by the AMI System, including exception reports, such as zero consumption reads and non-responding meters (including traceability to the meter location when the meter installer provides the location information).
  - ix. 24x7x365 server and network monitoring and trouble ticket generation, advanced security monitoring and preventative maintenance monitoring using diagnostic software tools.
  - x. Network optimization after the final propagation study and FlexNet Base Station site plan is verified by Sensus, and network tuning of endpoints deployed in the service area.
  - xi. Performing daily off-site vaulting of encrypted backup tapes containing one year of history for auditing purposes.
  - xii. Providing current Sensus fixed base reporting software (for up to 50,000 SmartPoint Modules) for up to thirteen (13) months of hourly data retention for basic reporting, route processing and querying functionality.
  - xiii. Providing telephone support consistent with the Sensus Technical Support as set forth in Exhibit A.
  - xiv. Providing "hot failover" disaster recovery solution within twenty four (24) hours.
  - xv. Providing FlexNet Base Station parts repair or replacement, at Sensus' discretion. This excludes field repair labor and field maintenance labor.
2. **Software as a Service** does not include any of the following services:
  - i. Normal periodic processing of accounts or readings for Customer's billing system for billing or other analysis purposes (other than daily file delivery).
  - ii. Field labor to troubleshoot any SmartPoint Modules in the field in meter populations that have been previously accepted.
  - iii. First response labor to troubleshoot FlexNet Base Station, Echo Transceivers, Remote Transceivers or other field network equipment.
  - iv. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
  - v. Customer understands that the Sensus route manager meter data management (MDM) application is limited to 50,000 or fewer SmartPoint Modules, and Customer must utilize an enterprise MDMS (or other suitable solution) to manage reading data when system size exceeds 50,000 SmartPoint Modules.

If an item is not listed in subparagraphs (1) or (2) above, such item is excluded from the Software as a Service and is subject to additional pricing.

## II. Further Agreements

### A. System Uptime Rate

1. Sensus (or its contractor) shall host the FlexWare Software application on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the hosted FlexWare Software application via internet or point to point connection (i.e., Hosted-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate shall be calculated as follows:

$$\text{System Uptime Rate} = 100 \times \frac{(\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month})}{\text{TMO}}$$

#### 2. Calculations

- i. **Targeted Minutes of Operation** or **TMO** means total minutes in the applicable month ("Month") minus the Scheduled Downtime in the Month.
- ii. **Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to the FlexWare Software is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
- iii. **Non-Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to FlexWare Software is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

3. **Exceptions.** "Exceptions" mean the following events:
  - i. Force Majeure;
  - ii. Emergency Work, as defined below; and
  - iii. Lack of Internet Availability, as described below.

4. **Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Host Systems or the FlexWare Software ("Emergency Work"). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the FlexWare Software by the Customer is made available (the "Host Systems"). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.

5. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus' networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

### B. Host Site-Security.

Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Host Systems:

1. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
2. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
3. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
4. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
5. Dry pipe pre-action fire detection and suppression systems are provided.
6. Data circuits are available via multiple providers and diverse paths, giving access redundancy.

**C. Responsibilities of Customer**

1. Customer shall pay all Software as a Service fees according to the pricing schedule in Exhibit E.
2. Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the FlexWare Software, Host Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the FlexWare Software application.
3. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by Customer to access the FlexWare application hosted by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Host Systems in a secure manner via the public Internet.
4. Each of Customer's authorized users will receive a username and password upon completion of the applicable Sensus registration process ("Authorized Users"). Such usernames and passwords will allow Authorized Users to access the FlexWare Software application. Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the FlexWare Software application and Host Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the FlexWare Software application through Customer's account, account ID, usernames or passwords.

**D. Disaster Recovery.** In the case of a disaster and loss of access to or use of the FlexWare Software application, Sensus shall use commercially reasonable efforts to restore operations at the same location or at a backup location within twenty four (24) hours. Customer acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as soon as commercially reasonable.

TYPE: Ordinance SUBMITTED BY: S. Viger DATE: 03.07.13

**DESCRIPTION:** Ordinance Authorizing the Acquisition of 10 N. Center Street and 111 W. Main Street for Corporate Purposes.

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	Financially Sound Village	<input type="checkbox"/>	Enrich the lives of Residents
	Quality Customer Oriented Services	<input checked="" type="checkbox"/>	Major Business/Corporate Center
<input checked="" type="checkbox"/>	Safe and Beautiful Village	<input type="checkbox"/>	Vibrant Major Corridors

---

**COMMITTEE ACTION:** N/A

**DATE:** N/A

---

**BACKGROUND:** The Village currently owns the vacant property at the northwest corner of Main and Center Streets. Various downtown studies including the current Comprehensive Economic Development Strategy call for the redevelopment of the village owned corner. The properties in question, 10 N. Center Street and 111 W. Main Street, abut the Village owned site on both the north and west sides. Having a larger site broadens the redevelopment opportunities. The current Village property is approximately a third of an acre, if the abutting properties were acquired the composite property would total approximately three quarters of an acre.

**KEY ISSUES:** Control of the property strengthens the Village's position in negotiating the redevelopment of this important downtown opportunity site. The property was appraised and the contract price of \$210,000.00 was negotiated.

As part of the contract the Village will allow the on – site parking of five cars to remain until such time as the property is redeveloped. Upon redevelopment the five spaces will be relocated elsewhere in the downtown within 300' of the property. The village's obligation to provide these spaces terminates two years after the property closing.

This purchase was supported at Executive Session and therefore does not appear on a Committee agenda. Once purchased, an RFP is envisioned to gauge the interest of the private sector in redeveloping the property into the highest and best use in Downtown.

**ALTERNATIVES:**

1. Village Board discretion.

**RECOMMENDATION:** Staff respectfully recommends that the Village Board authorize the purchase of the properties at 10 N. Center Street and 111 West Main Street.

**BUDGET IMPACT:** The cost of the property acquisition is \$210,000.00.

**ACTION REQUIRED:** Approval of the attached Ordinance authorizing the Village staff and Village Attorney to execute on behalf of the Village all documents necessary to effectuate the acquisition of the properties at 10 N. Center Street and 111 West Main Street.

**Property Acquisition**  
**10 N. Center Street & 111 West Main Street**  
**"The Feller Properties"**



**ORDINANCE NO.**

**AN ORDINANCE OF THE VILLAGE OF BENSENVILLE, ILLINOIS  
AUTHORIZING THE ACQUISITION OF PARCELS COMMONLY KNOWN  
AS "10 N. CENTER STREET AND 111 W. MAIN STREET"  
FOR CORPORATE PURPOSES**

**WHEREAS**, the Village of Bensenville is empowered pursuant to 65 ILCS 5/2-3-8 to acquire and hold real property for corporate purposes; and

**WHEREAS**, the Village Board of Trustees has determined that it is reasonable, necessary and in the public interest and welfare that the real property bearing the common addresses of 10 N. Center and vacant land adjacent thereto being the common address of 111 W. Main Street, Bensenville, which bear the P.I.N.s 03-14-215-014 and 03-14-215-015, should be acquired for corporate purposes; and

**WHEREAS**, the Village has negotiated agreements to purchase said real property with the owner thereof; a copy of said agreements being attached hereto and incorporated herein by reference collectively as Exhibit "B."

**NOW, THEREFORE, BE IT ORDAINED** by the President and Village Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, in regular session assembled:

**SECTION ONE:** That it is necessary and desirable that the real property described herein in Exhibit "A" be acquired by the Village of Bensenville for the purposes set forth herein.

**SECTION TWO:** That the Village Board does hereby approve the terms of the real estate purchase agreements between the Village of Bensenville and the owner of said real property, in the form attached hereto and incorporated herein by reference as Exhibit "B," and the Village President is authorized to execute the agreements, and the Village Clerk is authorized to attest thereto.

**SECTION THREE:** That the Village staff and Village attorney are hereby authorized to execute on behalf of the Village all documents necessary to effectuate the purposes of the acquisition of the real property and to take the necessary steps to acquire title to the real property described herein, after determining that the title to the real property is in proper order and that the environmental condition of the real property meets with the requirements of the Village, and to pay any and all costs related thereto.

**SECTION FOUR:** That, after acquisition of the real property, the Village staff is directed to take the necessary steps to properly remove said real property from the general real estate tax rolls at the appropriate time.

**SECTION FIVE:** That upon direction from the Attorney for the Village of Bensenville, the Village Manager is authorized to issue a check, draft or wire transfer in the amount of Two Hundred Ten Thousand and 00/100 Dollars (\$210,000.00) in total, and as adjusted by proper prorations determined by the Village's Attorney made payable to the owner of the real property, or as otherwise directed by the Village's Attorney.

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

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

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this 12th day of March, 2013.

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

f:\pkb\bensenville\ordinances\10 n. center street.ord.doc



**MAINSTREET ORGANIZATION OF REALTORS®**  
**VACANT LAND SALES CONTRACT**

*(This is not to be used for Tear Down)*



1 **1. THE PARTIES:** Buyer and Seller are hereinafter referred to as the "Parties".

2  
3 Buyer(s) (Please Print) **Village of Bensenville**

4  
5 Seller(s) (Please Print) **Chicago Title Land Trust as a Successor Trustee to Villa Park Trust and Savings ufa #1246**

6  
7 If Dual Agency applies, complete Optional Paragraph 32.

8  
9 **2. THE REAL ESTATE:** Real Estate shall be defined to include the Real Estate and all improvements thereon. Seller agrees to  
10 convey to Buyer or to Buyer's designated grantee, the Real Estate with the approximate lot size or acreage  
11 of **6,579sft. (+ or -)** commonly known as: **111 W. Main Street Bensenville IL 60106**

Address

City

State

Zip

12 **DuPage**

13 County

**0314215015**

14 Permanent Index Number(s) of Real Estate

15  
16 **3. PURCHASE PRICE:** Purchase Price of \$ **80,000.00** shall be paid as follows: Initial earnest  
17 money of \$  by ( check), ( cash), OR ( note due on **at acceptance**, 20~~XXX~~) to be  
18 increased to a total of \$ **XXXXXXXXXXXXXX** by **XXXXXXXXXXXXXX**, 20~~XXX~~. The earnest money and the original of this  
19 Contract shall be held by the Listing Company, as "Escrowee", in trust for the mutual benefit of the Parties. The balance of the  
20 Purchase Price, as adjusted by prorations, shall be paid at Closing by wire transfer of funds, or by certified, cashier's, mortgage  
21 lender's or title company's check (provided that the title company's check is guaranteed by a licensed title insurance company).

22  
23 **4. CLOSING:** Closing or escrow payout shall be on **March 22, or sooner by agreement**, 20~~13~~, or at such time as mutually agreed upon  
24 by the Parties in writing. Closing shall take place at the title company escrow office situated geographically nearest the Real Estate or  
25 as shall be agreed mutually by the Parties.

26  
27 **5. POSSESSION:** Possession shall be granted to Buyer(s) at the completion of closing unless otherwise agreed in writing by the  
28 parties.

29  
30 **6. PRORATIONS:** Proratable items shall include, without limitation, rents and deposits (if any) from tenants; Special Service Area  
31 or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and Homeowner or Condominium Association  
32 fees (and Master/Umbrella Association fees, if applicable). Accumulated reserves of a Homeowner/Condominium Association(s) are  
33 not a proratable item. Seller represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are  
34 \$ **XXXXXXXXXXXXXX** per **XXXXXX** (and, if applicable, Master/Umbrella Association fees are \$ **XXXXXXXXXXXXXX**  
35 per **XXXXXX**). Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity)  
36 confirmed prior to the Date of Acceptance. Installments due after the year of Closing for a Special Assessment Area or Special Service  
37 Area shall not be a proratable item and shall be payable by Buyer. The general Real Estate taxes shall be prorated as of the date of  
38 Closing based on % of the most recent ascertainable full year tax bill. All prorations shall be final as of Closing.  
39 Transfer of possession, based on 105%

40 **7. ATTORNEY REVIEW:** Within five (5) Business Days after the Date of Acceptance, the attorneys for the respective Parties, by  
41 Notice, may:

42 (a) Approve this Contract; or  
43 (b) Disapprove this Contract, which disapproval shall not be based solely on the Purchase Price; or  
44 (c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of Acceptance written  
45 agreement is not reached by the Parties with respect to resolution of the proposed modifications, then either Party may  
46 terminate this Contract by serving Notice, whereupon this Contract shall be null and void; or  
47 (d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may declare this Contract  
48 null and void and this Contract shall remain in full force and effect.

49 Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 7 (c). If Notice is not served within the  
50 time specified herein, the provisions of this Contract shall be deemed waived by the Parties to and this Contract shall remain in  
51 full force and effect.

52  
53 **8. INSPECTIONS:** Seller agrees to allow Buyer's inspectors reasonable access to the property upon reasonable notice and gives  
54 Buyer's inspectors permission to perform tests on the property, including invasive testing, if the inspections and the tests are  
55 reasonably necessary to satisfy the contingencies in this Contract. Buyer agrees to promptly provide copies of all such inspection

Buyer Initial

Buyer Initial

Seller Initial

Seller Initial

Address **111 W. Main Street Bensenville, IL 60106**

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56 reports to Seller, and to listing broker, if property is listed. Furthermore, Buyer agrees to promptly restore the property to its original  
57 condition and agrees to be responsible for any damage incurred while performing such inspections. **Seller authorizes Buyer's  
58 inspectors to take soil samples which may detect environmental contamination which may be required to be reported to the  
59 appropriate governmental authorities.** Buyer agrees to hold harmless and indemnify Seller from any liability for the actions of  
60 Buyer's agents and representatives while conducting such inspections and tests on the property. Notwithstanding anything to the  
61 contrary set forth in the above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable  
62 to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and  
63 void.

64

65 **9. MORTGAGE CONTINGENCY:** Seller *[check one]*  has  has not received a completed Loan Status Disclosure. This  
66 Contract is contingent upon Buyer obtaining a firm written mortgage commitment (except for matters of title and survey or matters  
67 totally within Buyer's control) on or before XXXXXXXXXX, 20      for a *(choose one)*  fixed  adjustable; *(choose one)*  
68  conventional  other loan of \$ XXXXXXXXXXXXXX or such lesser amount as Buyer elects to take, plus private  
69 mortgage insurance (PMI), if required. The interest rate (initial rate, if applicable) shall not exceed XXXXXXXXXX % per annum,  
70 amortized over not less than XXXXXXXXXX years. Buyer shall pay loan origination fee and/or discount points not to exceed XXXXXX%  
71 of the loan amount. Buyer shall pay the cost of application, usual and customary processing fees and Closing costs charged by lender.  
72 Buyer shall make written loan application within five (5) business days after the Date of Acceptance. **Failure to do so shall constitute  
73 an act of default under this Contract.** If Buyer, having applied for the loan specified above, is unable to obtain such loan  
74 commitment and serves written notice to Seller within the time specified, this Contract shall be null and void. **If written notice of  
75 inability to obtain such loan commitment is not served within the time specified, Buyer shall be deemed to have waived this  
76 contingency and this Contract shall remain in full force and effect. Unless otherwise provided herein, this Contract shall not be  
77 contingent upon the sale and/or closing of Buyer's existing real estate.** Buyer shall be deemed to have satisfied the financing  
78 conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is  
79 conditioned on the sale and/or closing of Buyer's existing real estate. If Seller at Seller's option and expense, within thirty (30) days  
80 after Buyer's notice, procures for Buyer such commitment or notifies Buyer that Seller will accept a purchase money mortgage upon  
81 the same terms, this Contract shall remain in full force and effect. In such event, Seller shall notify Buyer within five (5) Business  
82 Days after Buyer's notice of Seller's election to provide or obtain such financing, and Buyer shall furnish to Seller or lender all  
83 requested information and shall sign all papers necessary to obtain the mortgage commitment and to close the loan.

84

85 **10. FLOOD INSURANCE:** Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special  
86 flood hazard area. If written notice of the option to declare this Contract null and void is not given to Seller within ten (10) business  
87 days after Date of Acceptance, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and  
88 effect.

89

90 **11. CONDOMINIUM/COMMON INTEREST ASSOCIATIONS:** (If applicable) The Parties agree that the terms contained in this  
91 paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

92 (a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the  
93 Declaration of Condominium/Covenants, Conditions and Restrictions and all amendments; public and utility easements  
94 including any easements established by or implied from the Declaration of Condominium/Covenants, Conditions and  
95 Restrictions or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the  
96 Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the  
97 Declaration of Condominium/Covenants, Conditions and Restrictions.

98 (b) Seller shall be responsible for all regular assessments due and levied prior to Closing and for all special assessments  
99 confirmed prior to the Date of Acceptance.

100 (c) Buyer has, within five (5) Business Days from the Date of Acceptance, the right to demand from Seller items as stipulated by  
101 the Illinois Condominium Property Act, if applicable, and Seller shall diligently apply for same. This Contract is subject to  
102 the condition that Seller be able to procure and provide to Buyer, a release or waiver of any option of first refusal or other pre-  
103 emptive rights of purchase created by the Declaration of Condominium/Covenants, Conditions and Restrictions within the  
104 time established by the Declaration of Condominium/Covenants, Conditions and Restrictions.

105 (d) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in  
106 violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents  
107 would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in  
108 connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller written notice  
109 within five (5) Business Days after the receipt of the documents and information required by Paragraph 11 (c), listing those  
110 deficiencies which are unacceptable to Buyer. If written notice is not served within the time specified, Buyer shall be deemed  
111 to have waived this contingency, and this Contract shall remain in full force and effect.

112

113 **12. THE DEED:** Seller shall convey or cause to be conveyed to Buyer or Buyer's designated grantee good and merchantable title to

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Address <b>111 W. Main Street Bensenville, IL 60106</b>			
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114 the Real Estate by recordable general ~~Warranty~~ Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in  
 115 an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when  
 116 conveyed will be good and merchantable, subject only to: general real estate taxes not due and payable at the time of Closing,  
 117 covenants, conditions, and restrictions of record, building lines and easements, if any, so long as they do not interfere with the current  
 118 use and enjoyment of the Real Estate.  
 119

120 **13. ZONING:** Seller represents to the best of Seller's knowledge, without duty to investigate, that the Real Estate is zoned:  
 121 **Central Business**

122  
 123 **14. TITLE:** At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time  
 124 limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title  
 125 insurance policy in the amount of the Purchase Price by a title company licensed to operate in the State of Illinois, issued on or  
 126 subsequent to the Date of Acceptance, subject only to items listed in Paragraph 12. The commitment for title insurance furnished by  
 127 Seller will be conclusive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. If the  
 128 title commitment discloses unpermitted exceptions, or if the Plat of Survey shows any encroachments which are not acceptable to  
 129 Buyer, then Seller shall have said exceptions or encroachments removed, or have the title insurer commit to insure against loss or  
 130 damage that may be caused by such exceptions or encroachments. If Seller fails to have unpermitted exceptions waived or title insured  
 131 over prior to Closing, Buyer may elect to take the title as it then is, with the right to deduct from the Purchase Price prior  
 132 encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of  
 133 Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.  
 134

135 **15. BUILDING AND SEWAGE PERMITS CONDITION:** This Contract is subject to the condition that Buyer(s) obtain within  
 136 ~~Six (7)~~ business days after the date of this contract, at Buyer's expense, a building permit and an acceptable septic  
 137 percolation test or sewage tap-on permit from the applicable governmental agency having jurisdiction over the subject Property. If  
 138 Buyer(s) has properly, diligently, and promptly applied for said permits and approvals and has been unable to obtain the permits within  
 139 the times specified, Buyer(s) may, at Buyer's option, within one (1) business day of the time specified, serve written notice of such  
 140 failure and inability to obtain the necessary permits upon Seller(s) or Seller's attorney, and in such event this Contract shall become  
 141 null and void and all earnest money paid by Buyer(s) shall be refunded to Buyer(s). IN THE EVENT BUYER(S) DOES NOT SERVE  
 142 WRITTEN NOTICE WITHIN THE TIME SPECIFIED HEREIN, THIS PROVISION SHALL BE DEEMED WAIVED BY ALL  
 143 PARTIES HERETO AND THIS CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT.  
 144

145 **16. SOIL TEST/FLOOD PLAIN CONDITION:** This Contract is subject to Buyer obtaining within ~~Six (7)~~ business days  
 146 from date of acceptance a soil boring test and/or Flood Plain Determination at a site or sites of Buyer's choice on the Property to obtain  
 147 the necessary permits from the appropriate governmental authorities for the improvement contemplated by the Buyer. Such  
 148 determination and tests shall be at Buyer's expense. In the event Flood plain Determination and such tests are unsatisfactory, at the  
 149 option of Buyer, and upon written notice to Seller within one (1) business day of the time set forth above, this contract shall be null  
 150 and void and earnest money shall be refunded to Buyer upon mutual written direction of Seller and Buyer or the escrow agent. In the  
 151 event the Buyer does not serve written notice within the time specified herein, this provision shall be deemed waived by all parties  
 152 hereto and this contract shall continue in full force and effect.  
 153

154 **17. PLAT OF SURVEY:** Not less than one (1) business day prior to Closing Seller shall, at Seller's expense, furnish to Buyer or  
 155 Buyer's attorney a Plat of Survey dated not more than six (6) months prior to the date of Closing, prepared by an Illinois Professional  
 156 Land Surveyor, showing any encroachments, measurements of all lot lines, all easements of record, building set back lines of record,  
 157 fences, all buildings and other improvements on the Real Estate and distances therefrom to the nearest two lot lines. In addition, the  
 158 survey to be provided shall be a boundary survey conforming to the current requirements of the appropriate state regulatory authority.  
 159 The survey shall show all corners staked, flagged, or otherwise monumented. The survey shall have the following statement  
 160 prominently appearing near the professional land surveyor seal and signature: "This professional service conforms to the current  
 161 Illinois minimum standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey, and is not  
 162 acceptable.  
 163

164 **18. ESCROW CLOSING:** At the election of either Party, not less than five (5) Business Days prior to the Closing, this sale shall be  
 165 closed through an escrow with the lending institution or the title company in accordance with the provisions of the usual form of Deed  
 166 and Money Escrow Agreement, as agreed upon between the Parties, with provisions inserted in the Escrow Agreement as may be  
 167 required to conform with this Contract. The cost of the escrow shall be paid by the Party requesting the escrow. If this transaction is a  
 168 cash purchase (no mortgage is secured by Buyer), the Parties shall share the title company escrow closing fee equally.  
 169

170 **19. DAMAGE TO REAL ESTATE PRIOR TO CLOSING:** If prior delivery of the deed, the Real Estate shall be destroyed or  
 171 materially damaged by fire or casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of terminating

Buyer Initial	Buyer Initial	Seller Initial	Seller Initial
Address	<b>111 W. Main Street Bensenville, IL 60106</b>		
(Page 3 of 6) Rev. 3.2012 - © MAINSTREET ORGANIZATION OF REALTORS®			

172 this Contract and receiving a refund of earnest money or of accepting the Real Estate as damaged or destroyed, together with the  
173 proceeds of any insurance payable as a result of the destruction or damage, which proceeds Seller agrees to assign to Buyer. Seller  
174 shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of  
175 the State of Illinois shall be applicable to this Contract, except as modified in this paragraph.  
176

177 **20. SELLER REPRESENTATIONS:** Seller represents that Seller has not received written notice from any Governmental body or  
178 Homeowner Association regarding (a) zoning, building, fire or health code violations that have not been corrected; (b) any pending  
179 rezoning; (c) any pending condemnation or eminent domain proceeding; or (d) a proposed or confirmed special assessment and/or  
180 Special Service Area affecting the Real Estate. Seller represents, however, that, in the case of a special assessment and/or Special  
181 Service Area, the following applies:

- 182 1. There *[check one]*  is  is not a proposed or pending unconfirmed special assessment affecting the Real Estate not  
183 payable by Seller after date of Closing.
- 184 2. The Real Estate *[check one]*  is  is not located within a Special Service Area, payments for which will not be the  
185 obligation of Seller after date of Closing.

186 **If any of the representations contained herein regarding non-Homeowner Association special assessment or Special Service**  
187 **Area are unacceptable to Buyer, Buyer shall have the option to declare this Contract null and void. If written notice of the**  
188 **option to declare this Contract null and void is not given to Seller within ten (10) Business Days after Date of Acceptance or**  
189 **within the term specified in Paragraph 9 (whichever is later), Buyer shall be deemed to have waived such option and this**  
190 **Contract shall remain in full force and effect.** Seller further represents that Seller has no knowledge of boundary line disputes,  
191 easements or claims of easement not shown by the public records, any hazardous waste on the Real Estate or any improvements for  
192 which the required permits were not obtained. Seller represents that there have been no improvements to the Real Estate which are not  
193 either included in full in the determination of the most recent real estate tax assessment or which are eligible for home improvement  
194 tax exemption.  
195

196 **21. CONDITION OF REAL ESTATE AND INSPECTION:** Seller agrees to leave the Real Estate in a clean condition. All refuse  
197 and personal property that is not conveyed to Buyer shall be removed from the Real Estate at Seller's expense before closing. Buyer  
198 shall have the right to inspect Real Estate within 72 hours prior to closing to verify that the Real Estate is in substantially the same  
199 condition as of the Date of Offer of this Contract, normal wear and tear expected.  
200

201 **22. GOVERNMENTAL COMPLIANCE:** The Parties agree to comply with the applicable reporting requirements of the Internal  
202 Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.  
203

204 **23. BUSINESS DAYS/HOURS:** Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours  
205 are defined as 8:00 A.M. to 6:00 P.M. Chicago time.  
206 */Email and fax*

207 **24. FACSIMILE:** Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract.  
208

209 **25. DIRECTION TO ESCROWEES:** In every instance where this Contract shall be deemed null and void or if the Contract may be  
210 terminated by either Party, the following shall be incorporated by reference: "the Earnest Money shall be refunded to the Buyer upon  
211 written notice of the Parties to the Escrowee".  
212

213 **26. NOTICE:** All Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any  
214 one of a multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:  
215

- 215 (a) By personal delivery of such Notice; or
- 216 (b) By mailing of such Notice to the addresses recited herein by regular mail and by certified mail, return receipt requested.  
217 Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or
- 218 (c) By sending facsimile transmission. Notice shall be effective as of date and time of facsimile transmission, provided that the  
219 Notice transmitted shall be sent on Business Days during Business Hours. In the event fax Notice is transmitted during non-  
220 business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or
- 221 (d) By sending e-mail transmission. Notice shall be effective as of date and time of e-mail transmission, provided that the Notice  
222 transmitted shall be sent during Business Hours, and provided further that the recipient provides written acknowledgment to  
223 the sender of receipt of the transmission (by e-mail, facsimile, regular mail or commercial overnight delivery). In the event e-  
224 mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next  
225 Business Day after transmission; or
- 226 (e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit  
227 with the overnight delivery company.  
228

229 **27. PERFORMANCE:** Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to

Buyer Initial	Buyer Initial	Seller Initial	Seller Initial
Address	<b>111 W. Main Street Bensenville, IL 60106</b>		
(Page 4 of 6) Rev. 3.2012 - © MAINSTREET ORGANIZATION OF REALTORS®			

230 pursue any legal remedies at law or in equity and the prevailing Party in litigation shall be entitled to collect reasonable attorney fees  
231 and costs from the losing Party as ordered by a court of competent jurisdiction. There shall be no disbursement of earnest money  
232 unless Escrowee has been provided written agreement from Seller and Buyer. Absent an agreement relative to the disbursement of  
233 earnest money within a reasonable period of time, Escrowee may deposit funds with the Clerk of the Circuit Court by the filing of an  
234 action in the nature of interpleader. Escrowee shall be reimbursed from the earnest money for all costs, including reasonable attorney  
235 fees, related to the filing of the interpleader action. Seller and Buyer shall indemnify and hold Escrowee harmless from any and all  
236 conflicting claims and demands arising under this paragraph.  
237

238 **28. CHOICE OF LAW/GOOD FAITH:** All terms and provisions of this Contract including, but not limited to, the Attorney Review  
239 and Professional Inspection paragraphs, shall be governed by the laws of the State of Illinois and are subject to the covenant of good  
240 faith and fair dealing implied in all Illinois contracts.  
241

242 **29. OTHER PROVISIONS:** This Contract is also subject to those OPTIONAL PROVISIONS selected for use and initiated by the  
243 Parties which are contained on the succeeding pages and the following attachments, if any: **Rider "A" Seller's obligation  
244 TO CLOSE IS EXPRESSLY CONDITIONED ON THE BUYER CLOSING ON THE PURCHASE OF 10 N CENTER Bensenville.**  
245

246 **THE FOLLOWING OPTIONAL PROVISIONS APPLY ONLY IF INITIALED BY ALL PARTIES**  
247

248 **30. CANCELLATION OF PRIOR REAL ESTATE CONTRACT:** In the event either Party has entered into  
249 a prior real estate contract, this Contract shall be subject to written cancellation of the prior contract on or before  
250 **XXXXXXXXXX, 20 XX**. In the event the prior contract is not cancelled within the time specified, this Contract shall be  
251 null and void and earnest money refunded to Buyer upon written direction of the Parties to Escrowee. Notice to the purchaser  
252 under the prior contract should not be served until after Attorney Review and Professional Inspections provisions of this  
253 Contract have expired, been satisfied or waived.  
254

255 **31. INTEREST BEARING ACCOUNT:** Earnest money (with a completed W-9 and other required forms),  
256 shall be held in a federally insured interest bearing account at a financial institution designated by Escrowee. All interest earned on the  
257 earnest money shall accrue to the benefit of and be paid to Buyer. **The Buyer shall be responsible for any administrative fee (not to  
258 exceed \$100) charged for setting up the account.** In anticipation of Closing, the Parties direct Escrowee to close the account no  
259 sooner than ten (10) Business Days prior to the anticipated Closing date.  
260

261 **32. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to  
262 **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** (Designated Agent) acting as a Dual Agent in providing brokerage services on  
263 their behalf and specifically consent to Designated Agent acting as a Dual Agent with regard to the transaction referred to in this  
264 Contract.  
265

266 **33. INTERIM FINANCING:** This Contract is contingent upon Buyer obtaining a written commitment for  
267 interim financing on or before **XXXXXXXXXX, 20 XX** in the amount of **\$XXXXXXXXXXXXXX**. If Buyer is unable  
268 to secure the interim financing commitment and gives written notice to Seller within the time specified, this Contract shall be  
269 null and void. If written notice is not served within the time specified, this provision shall be deemed waived by the Parties and  
270 this Contract shall remain in full force and effect.  
271

272 **34. SPECIFIED PARTY APPROVAL:** This Contract is contingent upon the approval of the Real Estate by **\_\_\_\_\_**  
273 **XXXXXXXXXXXXXXXXXXXX**. Buyer's specified party, within five (5) Business Days after the Date of Acceptance. In  
274 the event Buyer's specified party does not approve of the Real Estate and written notice is given to Seller within the time  
275 specified, this Contract shall be null and void. If written notice is not served within the time specified, this provision shall be  
276 deemed waived by the Parties and this Contract shall remain in full force and effect  
277

278 **35. CREDIT AT CLOSING:** Seller agrees to credit to Buyer at Closing \$ **XXXXXXXXXXXXXX**  
279 to be applied to prepaid expenses, closing costs or both.  
280

281 *See Rider and Contract Addendum —*  
282  
283  
284  
285  
286  
287

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>111 W. Main Street Bensenville, IL 60106</b>			
<small>(Page 5 of 6) Rev. 3/2012 - © MAINSTREET ORGANIZATION OF REALTORS®</small>			





## COMMERCIAL SALES CONTRACT

WHEN EXECUTED BY ALL PARTIES THIS WILL BECOME A LEGALLY BINDING AND ENFORCEABLE CONTRACT

If Dual Agency applies, complete Paragraph #28.

FROM: (Buyer) **Village of Bensenville**

Name \_\_\_\_\_

TO: (Seller) **Chicago Title Land Trust as a Successor Trustee to Villa Park Trust and Savings ufa #1246** DATE: **FEBRUARY 14, 2013**

OFFER OF BUYER: I/We (Buyer) offer to purchase the Real Estate known as:

**10 N Center Street** **Bensenville, DUPAGE** **IL** **60106**  
Street City County State Ziplegally described on Exhibit A, if any, lot size approximately **50X157**, together with improvements thereon.permanent Index No.: **0314215014**, together with improvements thereon.  
**INCLUSIONS:** The following shall be included: fixtures, equipment, appliances, security systems (owned) and personal property, if any, located on the Real Estate of the date hereof, for which a bill of sale will be given: screens, storm windows and doors; shades, window blinds; radiator covers; heating, central cooling, ventilating, lighting and plumbing fixtures; attached mirrors, shelving, interior shutters, cabinets and awnings; planted vegetation; smoke detectors; as well as the following specific items: **ALL TO BE CONVEYED IN "AS-IS" CONDITION****EXCLUSIONS:** The following shall be excluded; all tenant owned personal property, tenant owned trade fixtures, and: \_\_\_\_\_

\_\_\_\_\_

Any personal property not specifically included shall be deemed excluded. A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.

**1. PURCHASE PRICE:** Purchase Price of \$ **130,000.00** shall be paid as follows: Initial earnest money of \$ **130,000.00** by  check,  cash OR  note due on **UPON ACCEPTANCE**, 20 **13**, to be increased to a total of **\$ XXXXXXXXX** by **XXXXXX**, 20 **XXX**. The earnest money and the original of this Contract shall be held by the Listing Company, as "Escrowee", in trust for the mutual benefit of the Parties. The balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing by wire transfer of funds, or by certified, cashier's, mortgage lender's or title company's check (provided that the title company's check is guaranteed by a licensed title insurance company).

Subject to conditions set forth herein.

**2. CLOSING:** Provided title conforms with this contract or has been accepted by Buyer, closing or escrow payout shall be on **MARCH 22, 2013 OR SOONER BY AGREEMENT**, by conveyance by stamped recordable warranty deed (or other appropriate deed if title is in trust or in an estate) and payment of purchase price. Title shall be conveyed at the time required by this contract subject only to: general Real Estate taxes not due and payable at the time of Closing; building lines and building restrictions of record; zoning and building laws and ordinances; public and utility easements; covenants and restrictions of record; party wall rights and agreements, if any; existing leases or tenancies; the mortgage or trust deed, if any, as described in Paragraph 2 above; acts done or suffered by or through the Buyer. However, Special Assessments, if any, for improvements not yet completed shall be paid by Seller at closing. This sale shall be closed at office of title insurance company or Seller's attorney's office as agreed or in escrow with the title company issuing the title commitment by deed and money escrow fee to be divided between Seller and Buyer. Seller and/or Buyer will pay their respective brokers' commissions as provided in their respective representation agreements or contracts and shall provide waiver of Brokers' liens at closing.**3. FINANCING:** This contract is contingent upon the ability of Buyer to secure within **XXXXXX** days of the Date of Acceptance, a firm written commitment for a loan evidenced by a note to be secured by a mortgage or trust deed on the Real Estate in the amount of \$ **XXXXXX**, or such lesser amount as Buyer shall accept, with a fixed or initial interest rate (delete one) not to exceed **XXXXX** %, said loan to be amortized over a minimum of **XXXXX** years, with a loan service charge not to exceed **XXXXXX** %. Seller and Buyer shall execute all documents and provide all information so that Buyer's lender can issue its commitment and close the transaction. If Buyer makes a good faith effort but is unable to obtain a commitment for the mortgage loan contemplated herein, Buyer shall so notify Seller in writing within the time specified in this Paragraph. IF SELLER IS NOT SO NOTIFIED WITHIN SUCH TIME PERIOD, BUYER SHALL FOR ALL PURPOSES BE DEEMED TO HAVE SECURED SUCH COMMITMENT OR TO HAVE AGREED TO PURCHASE THE REAL ESTATE WITHOUT MORTGAGE FINANCING OR BASED UPON THE MORTGAGE COMMITMENT ACTUALLY OBTAINED. If Seller is so notified, Seller may, at Seller's option, within 10 business days after Seller's receipt of said notice, elect to accept purchase money

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>10 N Center Street</b>	<b>Bensenville, DUPAGE</b>	<b>IL</b>	<b>60106</b>

55 financing or to secure a mortgage commitment on behalf of Buyer upon substantially the same terms for the mortgage loan  
56 contemplated herein with such other material terms and conditions for comparable loans. If Seller is so notified, Buyer agrees to  
57 furnish to Seller all requested credit and financial information and to sign customary papers relating to the application for securing  
58 of a mortgage commitment. If Seller is thereafter unable or unwilling to secure such commitment or to accept purchase money  
59 financing as herein provided, this contract shall be null and void, and Buyer and Seller shall execute all necessary documents to  
60 refund earnest money to Buyer.

61

62 **4. PRORATIONS:** Proratable items shall include, without limitation, Real Estate taxes based on 105% of most recent  
63 ascertainable taxes; assignable insurance policies, if requested by Buyer; rents and/or security deposits, if any; Special Service  
64 Area tax for the year of closing only; Condominium Association fees, if any; water taxes and other proratable items including  
65 flood hazard insurance shall be prorated to date of possession. Parties, hereto agree to re-prorate all unbilled Real Estate tax bills  
66 ~~through the date of closing, upon transfer of possession as provided for herein.~~

67

68 **5. POSSESSION:** Possession shall be delivered at closing subject to existing leases and tenancies, unless otherwise agreed in  
69 writing.

70

71 **6. ATTORNEY MODIFICATION:** The respective attorneys for the Parties may approve, disapprove, or make modifications to  
72 this Contract, other than stated Purchase Price, within five (5) Business Days after the Date of Acceptance. Disapproval or  
73 modification of this Contract shall not be based solely upon stated Purchase Price. Any notice of disapproval or proposed  
74 modification(s) by any Party shall be in writing. **If written notice is not served within the time specified, this provision shall be**  
75 **deemed waived by the Parties and this Contract shall remain in full force and effect. If prior to the expiration of ten (10)**  
76 **Business Days after Date of Acceptance, written agreement is not reached by the Parties with respect to resolution of**  
77 **proposed modifications, then this Contract shall be null and void, and all earnest money shall be returned to Buyer.**

78

79 **7. INSPECTION/ENVIRONMENTAL SITE ASSESSMENT:** This contract is contingent upon approval by Buyer of the  
80 condition of the Real Estate as evidenced by an inspection/environmental site assessment conducted at Buyer's expense and by  
81 contractor(s) selected by Buyer, within 5 business days after Seller's acceptance of this contract. Buyer shall indemnify  
82 Seller from and against any loss or damage to the Real Estate caused by the acts or negligence of Buyer or the person performing  
83 such inspection. If written notice of Buyer's disapproval is not served within the time specified, this provision shall be deemed  
84 waived by the Buyer and this Contract shall remain in full force and effect.

85

86 **8. DISCLOSURE:** Within 5 business days after date of acceptance Seller shall provide to the Buyer all information relevant to  
87 the condition, use and operation of the Real Estate available to Seller including but not limited to: schedule of operating expenses,  
88 existing surveys and title policies. Seller shall prepare, and deliver to Buyer, all documentation for the Real Estate as may be  
89 required by applicable disclosure laws in the jurisdiction the property is located. Seller shall also cooperate with Buyer to secure  
90 whatever environmental site assessment Buyer or Buyer's lender deems necessary or appropriate.

91

92 **9. SELLER REPRESENTATION:** Seller represents that Seller has not received written notice from any Governmental body or  
93 Homeowner Association regarding (a) zoning, building, fire or health code violations that have not been corrected; (b) any pending  
94 rezoning; (c) any pending condemnation or eminent domain proceeding; or (d) a proposed or confirmed special assessment and/or  
95 Special Service Area affecting the Real Estate. Seller represents, however, that, in the case of a special assessment and/or Special  
96 Service Area, the following applies:

97 1. There *[check one]* is  is not  a proposed or pending unconfirmed special assessment affecting the Real Estate not  
98 payable by Seller after date of Closing.  
99 2. The Real Estate *[check one]* is  is not  located within a Special Service Area, payments for which will not be the  
100 obligation of Seller after date of Closing.

101 **If any of the representations contained herein regarding non-Homeowner Association special assessment or Special Service**  
102 **Area are not acceptable to Buyer, Buyer shall have the option to declare this Contract null and void. If written notice of**  
103 **the option to declare this Contract null and void is not given to Seller within ten (10) Business Days after Date of**  
104 **Acceptance or within the term specified in Paragraph 7 (whichever is later), Buyer shall be deemed to have waived such**  
105 **option and this Contract shall remain in full force and effect.** Seller further represents that Seller has no knowledge of  
106 boundary line disputes, easements or claims of easement not shown by the public records or any hazardous waste on the Real  
107 Estate or any improvements for which the required permits were not obtained. Seller represents that there have been no  
108 improvements to the Real Estate which are not either included in full in the determination of the most recent Real Estate tax  
109 assessment or which are eligible for home improvement tax exemption. Notwithstanding anything to the contrary contained in this  
110 contract, Seller represents that to the best of Seller's knowledge, all heating, central cooling, ventilating, electrical and plumbing

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>10 N Center Street</b>	<b>Bensenville,</b>	<b>DUPAGE</b>	<b>IL</b> <b>60106</b>

111 fixtures and systems on the Real Estate and all equipment to be transferred to Buyer pursuant to this contract are in working order  
112 and will be so at the time of closing.

113 Seller represents that, to the best of Seller's knowledge, there are not now, nor have there been, any underground storage tanks  
114 located on the Property and no chemicals or toxic waste have been stored or disposed of on the Property, except for ~~XXXXXX~~  
115 ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~, and that the Property has not been cited for  
116 any violation of any Federal, State, County or local environmental law, ordinance or regulation and the Property is not located  
117 within any designated legislative "superfund" area, except for ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

118  
119 **10. LEASES:** Seller will not enter into or extend any leases with respect to the Real Estate from and after the date Seller signs this  
120 contract without the express prior written consent of Buyer. All security deposits, damage deposits, or other deposits in the  
121 possession of Seller, including interest earned, if applicable, shall be assigned to Buyer at the time of closing; Seller shall deliver to  
122 Buyer, within 5 business days after the Date of Acceptance, true and correct copies of all leases, and this contract is subject to  
123 Buyer's review and approval of same within 10 business days from Date of Acceptance. If written notice of Buyer's disapproval is  
124 not served within 10 business days after Date of Acceptance, this provision shall be deemed waived by the Buyer and this contract  
125 shall remain in full force and effect.

126  
127 **11. TITLE:** At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time  
128 limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title  
129 insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of  
130 Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 15. The requirement of  
131 providing extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by  
132 Seller will be conclusive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. If  
133 the title commitment discloses unpermitted exceptions, or if the Plat of Survey shows any encroachments which are not acceptable  
134 to Buyer, then Seller shall have said exceptions or encroachments removed, or have the title insurer commit to insure against loss  
135 or damage that may be caused by such exceptions or encroachments. If Seller fails to have unpermitted exceptions waived or title  
136 insured over prior to Closing, Buyer may elect to take the title as it then is, with the right to deduct from the Purchase Price prior  
137 encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of  
138 Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

139  
140 **12. PERFORMANCE: Time is of the essence of this Contract.** In any action with respect to this Contract, the Parties are free to  
141 pursue any legal remedies at law or in equity and the prevailing Party in litigation shall be entitled to collect reasonable attorney  
142 fees and costs from the non-Prevailing Party as ordered by a court of competent jurisdiction. There shall be no disbursement of  
143 earnest money unless Escrowee has been provided written agreement from Seller and Buyer. Absent an agreement relative to the  
144 disbursement of earnest money within a reasonable period of time, Escrowee may deposit funds with the Clerk of the Circuit Court  
145 by the filing of an action in the nature of interpleader. Escrowee shall be reimbursed from the earnest money for all costs,  
146 including reasonable attorney fees, related to the filing of the interpleader action. Seller and Buyer shall indemnify and hold  
147 Escrowee harmless from any and all conflicting claims and demands arising under this paragraph. ~~XXXXXXXXXXXXXXXXXXXX~~  
148 ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

149  
150 **13. NOTICE:** All Notices, except as provided otherwise in Paragraph 31(C) (2), shall be in writing and shall be served by one  
151 Party or attorney to the other Party or attorney. Notice to any one of a multiple person Party shall be sufficient Notice to all. Notice  
152 shall be given in the following manner:

153 (a) By personal delivery of such Notice; or  
154 (b) By mailing of such Notice to the addresses recited herein by regular mail and by certified mail, return receipt requested.  
155 Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or  
156 (c) By sending facsimile transmission. Notice shall be effective as of date and time of facsimile transmission, provided that  
157 the Notice transmitted shall be sent on Business Days during Business Hours. In the event fax Notice is transmitted  
158 during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after  
159 transmission; or  
160 (d) By sending e-mail transmission. Notice shall be effective as of date and time of e-mail transmission, provided that the  
161 Notice transmitted shall be sent during Business Hours, and provided further that the recipient provides written  
162 acknowledgment to the sender of receipt of the transmission (by e-mail, facsimile, regular mail or commercial overnight  
163 delivery). In the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the  
164 first hour of the next Business Day after transmission; or  
165 (e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following  
166 deposit with the overnight delivery company.

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>10 N Center Street</b>	<b>Bensenville,</b>	<b>DUPAGE</b>	<b>IL</b> <b>60106</b>

167 **14. BUSINESS DAYS/HOURS:** Business Days are defined as Monday through Friday, excluding Federal holidays. Business  
168 Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

169 e-mail, and/cremail

170 **15. FACSIMILE:** Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract.

171

172 **16. DAMAGE TO REAL ESTATE PRIOR TO CLOSING:** If, prior to delivery of the deed, the Real Estate shall be destroyed  
173 or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of  
174 either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed,  
175 together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which  
176 gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at closing. Seller shall not be obligated to repair or replace  
177 damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable  
178 to this Contract, except as modified in this paragraph.

179

180 **17. PLAT OF SURVEY:** Prior to closing, Seller shall furnish at Seller's expense an ALTA-ACSM survey dated not more than six  
181 (6) months prior to Date of Acceptance by a licensed land surveyor showing the location of the improvements thereon (including  
182 fences separating the Real Estate from adjoining properties) and showing all encroachments, if any. If the survey discloses  
183 improper location of improvements or encroachments and Seller is unable to obtain title insurance protection for the benefit of  
184 Buyer against loss resulting from such improper locations or encroachment, Buyer may, at his option, declare this contract to be  
185 null and void. Providing all existing improvements (including fences) and encroachments, if any, appear on the survey thus  
186 furnished, Buyer shall bear the cost of any later date survey which may be required by Buyer's lender or desired by Buyer.

187

188 **18. BILL OF SALE:** All of the items of personal property shall be transferred to Buyer by delivery at closing of Bill of Sale  
189 without warranty of merchantability or fitness for particular purpose.

190

191 **19. AFFIDAVIT OF TITLE:** Seller also shall furnish Buyer an Affidavit of Title covering the time of closing, subject only to the  
192 title exceptions permitted by this contract and shall sign customary ALTA forms.

193

194 **20. CLEAN CONDITION:** Seller shall remove all debris from the Real Estate and improvements by date of possession. Buyer  
195 shall have the right to inspect the Real Estate and improvements prior to closing to verify that the Real Estate, improvements and  
196 included personal property are in substantially the same condition as of the date of Seller's acceptance of this contract, normal  
197 wear and tear excepted.

198

199 **21. CODE VIOLATIONS:** The Seller warrants that neither Seller nor Seller's agent has received notice of any dwelling zoning,  
200 building, fire and health code violations which exists on the date of this contract from any city, village, or other governmental  
201 authority.

202

203 **22. MUNICIPAL ORDINANCES:** Seller shall comply with the terms of any municipal ordinance relating to the transaction  
204 contemplated herein for the municipality in which the Real Estate is located and shall provide to Buyer at closing evidence of  
205 compliance with such ordinances. Transfer taxes required by local ordinance shall be paid by the party designated in such  
206 ordinance. Seller shall pay any transfer tax imposed by state law.

207

208 **23. SPECIAL FLOOD HAZARD AREA:** Buyer shall have the option to declare this Contract null and void if the Real Estate is  
209 located in a special flood hazard area which requires Buyer to carry flood insurance. **If written notice of the option to declare  
210 this Contract null and void is not given to Seller within ten (10) Business Days after Date of Acceptance or within the term  
211 specified in Paragraph 2 (whichever is later), Buyer shall be deemed to have waived such option and this Contract shall  
212 remain in full force and effect.**

213

214 **24. TAX LAW COMPLIANCE:** Seller agrees to provide to the Internal Revenue Service the Sale of Real Estate 1099 form as  
215 required by law. This contract and the transaction described herein may be subject to the provisions of the Foreign Investment in  
216 Real Property Tax Act of 1980 and all amendments thereto (the "Act"). Seller and Buyer shall execute or cause to be executed all  
217 documents and take or cause to be taken all actions necessary in order that Buyer shall have no liability, either actual or potential,  
218 under the Act. This contract and the transaction described herein may be subject to the provisions of the Foreign Investment in  
219 Real Property Tax Act of 1980 and all amendments thereto (the "Act"). Seller and Buyer shall execute or cause to be executed all  
220 documents and take or cause to be taken all actions necessary in order that Buyer shall have no liability, either actual or potential,  
221 under the Act.

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>10 N Center Street</b>	<b>Bensenville,</b>	<b>DUPAGE</b>	<b>IL</b> <b>60106</b>

222 **25. CAPTIONS:** Captions are not intended to limit the terms contained after said caption and are not part of the contract.  
 223

224 **26. TAX-DEFERRED EXCHANGE:** Seller and Buyer agree to cooperate in any applicable tax- deferred Exchange, and shall  
 225 execute all documents with respect thereto at their own expense, pursuant to the applicable provisions of the Internal Revenue  
 226 Code, as amended from time to time.  
 227

228 **27. CONDOMINIUM/COMMON INTEREST ASSOCIATIONS:** (If applicable) The Parties agree that the terms contained in  
 229 this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.  
 230 (a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the  
 231 Declaration of Condominium/Covenants, Conditions and Restrictions and all amendments; public and utility easements  
 232 including any easements established by or implied from the Declaration of Condominium/Covenants, Conditions and  
 233 Restrictions or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the  
 234 Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the  
 235 Declaration of Condominium/Covenants, Conditions and Restrictions.  
 236 (b) Seller shall be responsible for all regular assessments due and levied prior to Closing and for all special assessments  
 237 confirmed prior to the Date of Acceptance.  
 238 (c) Buyer has, within five (5) Business Days from the Date of Acceptance, the right to demand from Seller items as stipulated  
 239 by the Illinois Condominium Property Act, if applicable, and Seller shall diligently apply for same. This Contract is  
 240 subject to the condition that Seller be able to procure and provide to Buyer, a release or waiver of any option of first  
 241 refusal or other pre-emptive rights of purchase created by the Declaration of Condominium/Covenants, Conditions and  
 242 Restrictions within the time established by the Declaration of Condominium/Covenants, Conditions and Restrictions. In  
 243 the event the Condominium Association requires personal appearance of Buyer and/or additional documentation, Buyer  
 244 agrees to comply with same.  
 245 (d) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in  
 246 violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the  
 247 documents would unreasonably restrict Buyer's use of the premises or would result in increased financial obligations  
 248 unacceptable to Buyer in connection with owning the Real Estate, **then Buyer may declare this Contract null and void**  
 249 **by giving Seller written notice within five (5) Business Days after the receipt of the documents and information**  
 250 **required by Subparagraph (c) above, listing those deficiencies which are unacceptable to Buyer. If written notice is**  
 251 **not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract**  
 252 **shall remain in full force and effect.**  
 253 (e) Seller shall not be obligated to provide a condominium survey.  
 254 (f) Seller shall provide a certificate of insurance showing Buyer (and Buyer's mortgagee, if any) as an insured.  
 255

256     28. **CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented  
 257 XXXXXXXXXXXXXXXXXXXXXXXXXXXX (Licensee) to acting as a Dual Agent in providing brokerage services on their  
 258 behalf and specifically consent to Licensee acting as a Dual Agent in regard to the transaction referred to in this contract.

**29. BUILDING AND SEWAGE PERMITS CONDITION:** This Contract is subject to the condition that Buyer(s) obtain within Seven (7) business days after the date of this contract, at Buyer's expense, a building permit and an acceptable septic percolation test or sewage tap-on permit from the applicable governmental agency having jurisdiction over the subject Property. If Buyer(s) has properly, diligently, and promptly applied for said permits and approvals and has been unable to obtain the permits within the times specified, Buyer(s) may, at Buyer's option, within one (1) business day of the time specified, serve written notice of such failure and inability to obtain the necessary permits upon Seller(s) or Seller's attorney, and in such event this Contract shall become null and void and all earnest money paid by Buyer(s) shall be refunded to Buyer(s). **IN THE EVENT BUYER(S) DOES NOT SERVE WRITTEN NOTICE WITHIN THE TIME SPECIFIED HEREIN, THIS PROVISION SHALL BE DEEMED WAIVED BY ALL PARTIES HERETO AND THIS CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT.**

**30. SOIL TEST/FLOOD PLAIN CONDITION:** This Contract is subject to Buyer obtaining within Seven (7) business days from date of acceptance a soil boring test and/or Flood Plain Determination at a site or sites of Buyer's choice on the Property to obtain the necessary permits from the appropriate governmental authorities for the improvement contemplated by the Buyer. Such determination and tests shall be at Buyer's expense. In the event Flood plain Determination and such tests are unsatisfactory, at the option of Buyer, and upon written notice to Seller within one (1) business day of the time set forth above, this contract shall be null and void and earnest money shall be refunded to Buyer upon mutual written direction of Seller and Buyer or the escrow agent. In the event the Buyer does not serve written notice within the time specified herein, this provision shall be deemed waived by all parties hereto and this contract shall continue in full force and effect.

Buyer Initial _____	Buyer Initial _____	Seller Initial _____	Seller Initial _____
Address <b>10 N Center Street</b>	<b>Bensenville, DUPAGE</b>	<b>IL</b>	<b>60106</b>





# RE/MAX 1st

1<sup>st</sup> in Knowledge, Service and Support

## RIDER "A"

This rider is attached to and made part of the contract to purchase parcels 031421505 and 0314215014, in Bensenville Illinois. Both contracts (10 N Center Street Bensenville and Lot 15 on W. Main Street Bensenville) reference the following conditions, and are part of the agreements. Also, covenants, terms and conditions of the Rider "A" shall run with the premises and may be recorded including with language on the deed at closing.

### Possession:

Possession shall be retained by Seller until June 15, 2013 or sooner by agreement.

### Parking Spaces:

The Seller also owns and leases property located at 111 W. Main Street Bensenville IL. This is a commercial retail/office building. Currently the tenants of this space, park 5 vehicles on the property which is to be sold. Vehicles are parked daily and may remain over night. The Village of Bensenville agrees that the tenants' can continue use for parking 5 vehicles after closing for a period of 2 years from date of closing. It is also agreed the Village may request the removal of these vehicles if there is a developer for the property. The village will give 60 days' notice to the tenants. The Village will then make available to the tenants at no cost, spaces for 5 vehicles to park daily and over night. These spaces will be no greater in distance than the front door (south entrance) of 111 W Main Street Bensenville and the corner of Green and Center Streets, approx. 300 ft. Use of these spaces will continue until the 2 year anniversary of the property closing.

### Surveys:

Seller shall provide a regular grade survey for both parcels, any extended coverage will be provided at Seller's expense

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Seller

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Buyer

RE/MAX 1st  
Elmhurst, Ill.,

Direct 630.333.1500  
Fax 630.333.1199

**ADDENDUM TO CONTRACT**  
**VILLAGE OF BENSENVILLE (BUYER)**  
**CHICAGO TITLE LAND TRUST AS SUCCESSOR TRUSTEE TO**  
**VILLAGE PARK TRUST AND SAVINGS UTA #1246 (SELLER)**

This Addendum is attached to and made a part of the Contracts to Purchase Parcels 03-14-215-015 and 03-14-215-014, in Bensenville, Illinois.

**1.01 Contract Approval.** This Contract is contingent on approval by vote of the Village Board in open session.

**2.01 Due Diligence.** This Contract is contingent upon completion of, and acceptance by the Village of Bensenville of an Environmental Site Assessment concerning the physical condition of the property, including but not limited to soil conditions. For this purpose, Seller shall agree to provide information and access to the Property as requested. The Contract may be canceled, without penalty, should the Environmental Site Assessment result in an environmental finding which is not acceptable to the Village of Bensenville.

**3.01 Possession.** Seller shall have the right to occupy and possess the Property following the Closing on the terms and conditions set forth in this Section 2.01, as follows:

A. Post-Closing. Seller will deliver possession of the Property to Buyer on or before 12:01 a.m. June 16, 2013. At the time of tender of possession, Seller shall remove all personal property belonging to Seller. Failure to remove all such personal property shall be held to be a breach of this Contract.

B. Insurance. During the period of post-closing possession, the Seller agrees to maintain in full force and effect, a policy of insurance adequately covering all of Seller's personal effects, and insuring against all perils, including public liability which may arise out of the Seller's and/or its agents, servants and invitees use and occupancy of the Property. Seller further agrees to assign to Buyer any proceeds from said policies occasioned by loss of property belonging to Buyer, without any defense. Seller agrees to name the Buyer as an additional insured and loss payee on said policies of insurance.

C Indemnification. The Seller agrees to indemnify and hold the Buyer harmless from any and all claims, demands, actions or the like arising in any way, from or out of their occupancy, use or enjoyment of the Property subsequent to the closing of title and delivery of deed to the actual delivery of possession to the Buyer.

D Post-Closing Occupancy Rental/Property Taxes. The Seller shall not be responsible for payment of any daily rental for occupancy of the Property following Closing and through the date of Possession granted herein. The Seller shall remain responsible for payment of all property taxes on the Property up to and including the date of transfer of possession. Said taxes shall be calculated and paid at closing, subject to the proper proration.

E. Property Condition. Seller shall, during the term of the Post Closing Possession,

keep the Property in as good condition, maintenance and repair as that which existed on the date of full execution of this Agreement, less ordinary wear and tear. Seller acknowledges that they are solely responsible for paying for and maintenance of all utilities serving the Property and for both interior and exterior maintenance of the premises during their post-closing occupancy of the Property. Seller acknowledges that notwithstanding the Buyer's acceptance of deed and/or bill of sale on the Closing date, the Buyer shall have the right to conduct a subsequent inspection of the Property on the date of delivery of possession of the Property to the Buyer to ensure that this provision has been followed. At the date of tender of possession, Seller shall once again execute an affidavit attesting to the absence of any claims of lien or potential lienors known to the Seller and further attesting that there have been no improvements to the Property for one hundred twenty (120) days immediately preceding the Closing Date which have not been fully paid for.

**F      Breach.**      Unless the Buyer has provided in writing for a later date of tender of possession, in the event the Seller fails to deliver possession of the Property to Buyer on the date provided for herein in accordance with the terms set forth herein, the Buyer shall have the right to maintain an action for emergency injunctive relief in order to take immediate possession and Seller shall be responsible for court costs and reasonable attorney's fees incurred in any effort by the Buyer to gain possession of the Property.

**G      Holdback.**      Five Thousand and 00/100 Dollars (\$5,000.00) of the acquisition funds shall be held back by Buyer. These monies will be disseminated upon uneventful transfer of the possession of the Property from the Seller to the Buyer. If needed, these funds will be used to pay taxes, insurance, to remove personality from the property and/or to repair or place the Property in the condition it held at the date of closing (except as provided for herein), or for other items required of the Seller, which have not been satisfied in accordance with the Contract.

**H.      Post-Closing Access Rights.** During the period of post-closing possession, the Buyer shall have the right to access the Property upon reasonable notice to the Seller.

**4.01      Parking.**      The Village will provide five (5) spaces for tenant parking (passenger vehicles/only) under the terms of the Rider.

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Seller

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Buyer

**TYPE:** Resolutions/Ordinances **SUBMITTED BY:** Joe Caracci **DATE:** 03/04/2013

**DESCRIPTION:** Approval of numerous Ordinances and Resolutions associated with two separate Agreements with IDOT for participation in the Resurfacing of IL 83 between IL 64 (North Avenue) and IL 72 (Oakton Street) that will include enhanced landscaped medians through the Village of Bensenville

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	Financially Sound Village	<input checked="" type="checkbox"/>	Enrich the lives of Residents
<input checked="" type="checkbox"/>	Quality Customer Oriented Services	<input type="checkbox"/>	Major Business/Corporate Center
<input checked="" type="checkbox"/>	Safe and Beautiful Village	<input checked="" type="checkbox"/>	Vibrant Major Corridors

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**ASSIGNED COMMITTEE: I & E (consensus to move forward)** **DATE: 02/26/2013**

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**BACKGROUND:** Illinois Department of Transportation (IDOT) is proposing to resurface IL-83 from IL-64 to IL-19 and from IL-19 to IL-72 as two separate projects. Both of these projects are currently listed on their April 2013 letting. As part of these projects, the Village of Bensenville has expressed its interest to IDOT to improve the existing medians along IL-83.

As it exists today, the medians along IL-83 are entirely composed of concrete. Due to lack of proper maintenance these medians have deteriorated over time. As a result, much of the concrete in the medians is broken and undesired weeds have started to grow through the cracks. The Village has envisioned these projects as an opportunity to beautify the existing medians by landscaping, planting decorative trees, and installing stamped colored concrete within the Village limits. IL-83 is one of the corridors identified for improvement in our Comprehensive Economic Development Strategy. With this project on IDOT's immediate horizon, it offers the Village the opportunity to complete one of our Strategic Goals much sooner than originally anticipated.

**KEY ISSUES:** At the February 26, 2013 I&E Committee Meeting, consensus was gathered to participate in the improvements. IDOT has provided the Village with the necessary Resolutions and Ordinances required for our participation. The IDOT project actually consists of two different contracts, so unfortunately, two sets of agreements are necessary. As such, the following approvals are sought for each contract:

- Resolution approving an Agreement with IDOT for participation in the Project
- Resolution authorizing the appropriation of funds (Exhibit B)
- Ordinance restricting parking along Route 83 (Exhibit C)
- Ordinance prohibiting discharge of sanitary or industrial waste into storm sewer on Route 83 (Exhibit D)
- Ordinance prohibiting encroachments onto Route 83 (Exhibit E)

**ALTERNATIVES:** Discretion of the Village Board

**RECOMMENDATION:** Staff recommends approval of all Resolutions and Ordinances

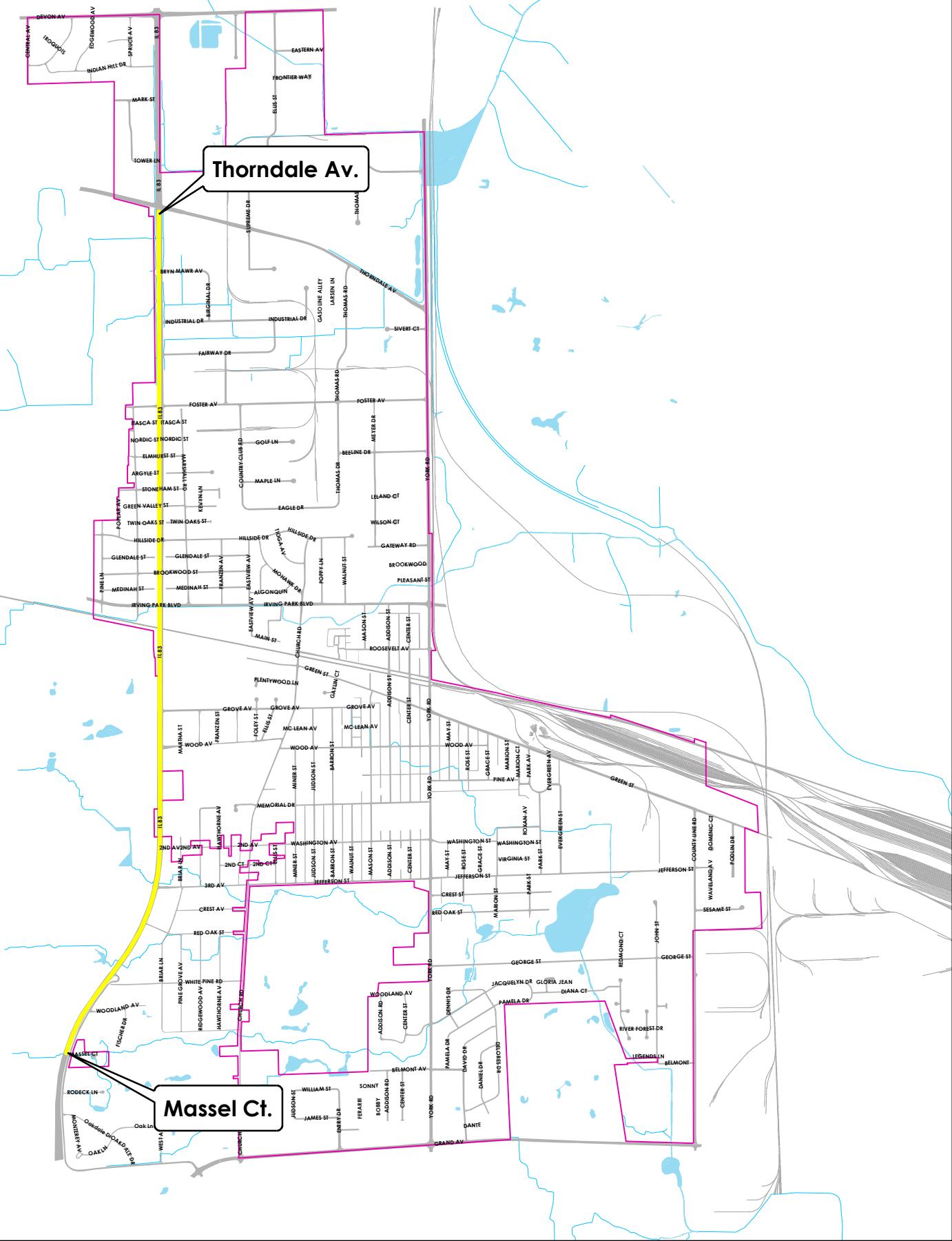
**BUDGET IMPACT:** This is a non-budgeted item in CY-2013 as the Village was not aware of such projects coming through from IDOT. However, staff has budgeted \$200,000 for Comprehensive Economic Development Initiatives and \$75,000 for Downtown Streetscape in the Capital Account# 31080810-596000 which can be utilized to pay for these improvements.

**ACTION REQUIRED:** Approval of the necessary Resolutions and Ordinances (ten in total) that will be combined to create two separate "Agreements" between IDOT and the Village.



# Village of Bensenville

## Illinois Route 83 Median Improvements





# Village of Bensenville

Proposed Route 83 Median Improvement



**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE VILLAGE OF BENSENVILLE  
TO ENTER INTO AN AGREEMENT WITH THE  
STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION  
CONCERNING ROAD IMPROVEMENTS TO ILLINOIS ROUTE 83  
(IDOT CONTRACT 60V54)**

**WHEREAS**, the VILLAGE OF BENSENVILLE (hereinafter “VILLAGE”) is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the VILLAGE is empowered to make all agreements and contracts necessary in the exercise of its statutory powers; and

**WHEREAS**, the VILLAGE has been approached by the Department of Transportation of the State of Illinois to enter into an Agreement with it relative to improvements the State plans to make to Illinois Route 83 (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13; and

**WHEREAS**, Village staff has reviewed the Agreement tendered by the State of Illinois for the purpose set forth herein and recommends that it be approved by the Village in the form of Agreement attached hereto and incorporated herein by reference as Exhibit “1;” and

**WHEREAS**, the President and Board of Village Trustees have reviewed the Agreement and have determined that it is reasonable, necessary, and desirable for the VILLAGE to enter into the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Village Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

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

**SECTION TWO:** The Village President is hereby authorized and directed, on behalf of the Village of Bensenville, to execute and take all other necessary actions, either in his own person or by his designee, to effect the Village's entry into the Agreement in Exhibit "1," and the Village Clerk is hereby authorized to attest to the same as may be required.

**SECTION THREE:** This Resolution shall take effect immediately upon its passage and approval as provided by law, and all resolutions in conflict herewith are repealed to the extent of their conflict.

**PASSED AND APPROVED** by the President and Board of Village Trustees of the Village of Bensenville, Illinois, this \_\_ day of March, 2013.

APPROVED:

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

FAP Route 344  
State Section: 540R-RS-3  
County: Cook/DuPage  
Contract No.: 60V54  
Job No. : C-91-003-13  
Agreement Number: JN-113-044

## AGREEMENT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 A.D., by and between the STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION hereinafter called the STATE, and the VILLAGE of BENSENVILLE of the State of Illinois, hereinafter called the VILLAGE.

### WITNESSETH:

WHEREAS, the STATE in order to facilitate the free flow of traffic and ensure safety to the motoring public, is desirous of improving approximately 18,419 feet of Illinois Route 83, FAP Route 344, STATE Job No.: C-91-003-13, State Contract Number: 60V54, STATE Section: 540R-RS-3 by resurfacing, Illinois Route 83, from Illinois Route 19 (Irving Park Road) to Illinois Route 64 (North Avenue) and by performing all other work necessary to complete the improvement in accordance with the approved plans and specifications; This is a resurfacing (3P) project in which the work includes Class D patching, HMA surface removal (2 ½"), placement of polymerized HMA surface course, SMA (2") and polymerized leveling binder (1") throughout the project limits. Other work includes drainage structures adjustments, reconstruction, and cleaning, placement of concrete, seeded and landscaped medians, removal and replacement of raised reflective pavement markers, thermoplastic pavement markings and detector loops throughout the

limits of resurfacing.

WHEREAS, the VILLAGE is desirous of said improvement in that same will be of immediate benefit to the VILLAGE residents and permanent in nature;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The STATE agrees to make the surveys, obtain all necessary rights of way, prepare plans and specifications, receive bids and award the contract, furnish engineering inspection during construction and cause the improvement to be built in accordance with the approved plans, specifications and contract.
2. The STATE agrees to pay for all right of way, construction and engineering cost subject to reimbursement by the VILLAGE, as hereinafter stipulated.
3. It is mutually agreed by and between the parties hereto that the estimated cost and cost proration for this improvement is as shown on Exhibit A.
4. The VILLAGE has passed a resolution appropriating sufficient funds to pay its share of the cost for this improvement, a copy of which is attached hereto as "Exhibit B" and made a part hereof.
5. The VILLAGE further agrees that upon award of the contract for this improvement, the VILLAGE will pay to the STATE in a lump sum from any funds allotted to the VILLAGE, an amount equal to 80% of its obligation incurred under this AGREEMENT, and will pay to said STATE the remainder of the obligation (including any non-participating costs on FA Projects) in a lump sum, upon completion of the project based upon final costs.
6. The VILLAGE further agrees to pass a supplemental resolution to provide necessary funds for its share of the cost of this improvement if the amount appropriated in "Exhibit B" proves to be insufficient, to cover said cost.

7. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, requiring that parking be prohibited within the limits of this improvement, a copy of which is attached hereto as "Exhibit C", and will in the future prohibit parking at such locations on or immediately adjacent to this improvement as may be determined necessary by the STATE from traffic capacity studies.
8. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, prohibiting the discharge of sanitary sewage and industrial waste water into any storm sewers constructed as a part of this improvement, a copy of which is attached hereto as "Exhibit D".
9. Prior to the STATE advertising for the work proposed hereunder, the disposition of encroachments will be cooperatively resolved with representatives from the VILLAGE and the STATE.
10. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, relative to the disposition of encroachments and prohibiting in the future, any new encroachments within the limits of the improvements, a copy of which is attached as "Exhibit E".
11. The VILLAGE has adopted a resolution, will send a letter, or sign the Plan Approval page which is part of this document, prior to the STATE advertising for the work to be performed hereunder, approving the plans and specifications as prepared.
12. The VILLAGE agrees not to permit driveway entrance openings to be made in the curb, as constructed, or the construction of additional entrances, private or

commercial, along Illinois Route 83 without the consent of the STATE.

13. The VILLAGE shall exercise its franchise rights to cause private utilities to be relocated, if required, at no expense to the STATE.
14. The VILLAGE agrees to cause its utilities installed on right of way after said right of way was acquired by the STATE or installed within the limits of a roadway after the said roadway's jurisdiction was assumed by the STATE, to be relocated and/or adjusted, if required, at no expense to the STATE.
15. All VILLAGE owned utilities, on STATE right of way within the limits of this improvement, which are to be relocated/adjusted under the terms of this Agreement, will be relocated/adjusted in accordance with the applicable portions of the "Accommodation of Utilities of Right of Way of the Illinois State Highway System." (92 Ill. Adm. Code 530).
16. The VILLAGE agrees to obtain from the STATE an approved permit for any VILLAGE owned utility relocated/adjusted as part of this improvement, and shall abide by all conditions set forth therein.
17. Upon final field inspection of the improvement and so long as Illinois Route 83 is used as a STATE Highway, the STATE agrees to maintain or cause to be maintained the through traffic lanes, the left-turn turn lanes and right turn lanes, each lane being 12 feet and variable in width, and the curb and gutter and stabilized shoulders.
18. Upon final field inspection of the improvement, the VILLAGE agrees to maintain or cause to be maintained those portions of the improvement which are not maintained by the STATE, including colored and stamped decorative medians, ~~parkways~~, median landscaping, ~~guardrails~~, crosswalk and stopline markings, VILLAGE owned utilities including appurtenances thereto, ~~and shall maintain the storm sewers and appurtenances by performing those functions necessary to keep the sewer in a serviceable condition including cleaning sewer lines, inlets, manholes, and catch basins along with the repair or replacement of inlet, manhole~~

~~and catch basins' frames, grates or lids.~~ The maintenance, repair and/or reconstruction of storm sewers constructed as part of this improvement beyond the aforescribed responsibilities shall be that of the STATE.

19. The VILLAGE further agrees to continue its existing maintenance responsibilities on all side road approaches under its jurisdiction, including all left and right turn lanes on said side road approaches, up to the through edge of pavement of Illinois Route 83. Drainage facilities, if any, at the aforementioned side roads located within the STATE right-of-way shall be the joint maintenance responsibility of the STATE and the VILLAGE unless there is an agreement specifying different responsibilities. Obligations of the STATE and the VILLAGE, will cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or Federal funding source fails to appropriate or otherwise make available funds for this contract.

This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within the three years subsequent to execution of the agreement.

This Agreement shall be binding upon and to the benefit of the parties hereto, their successors and assigns.

VILLAGE OF BENSENVILLE

Attest:

---

Susan Janowiak  
Village Clerk  
Village of Bensenville

(SEAL)

By: \_\_\_\_\_  
Frank Soto  
Village President  
Village of Bensenville

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

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION

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

John Fortmann, P.E.  
Acting Deputy Director  
Region One Engineer

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

Job No.: C-91-319-11  
Agreement No.: JN-113-044

## PLAN APPROVAL

WHEREAS, in order to facilitate the improvement of FAP Route 344 known as Illinois Route 83, State Section: 540R-RS-3, the VILLAGE agrees to that portion of the plans and specifications relative to the VILLAGE's financial and maintenance obligations described herein, prior to the STATE's advertising for the aforescribed proposed improvement.

Approved\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**CONTRACT 60V45**  
**ESTIMATE OF COST & PARTICIPATION**

<b>Type of Work</b>	<b>STATE</b>		<b>VILLAGE OF BENSENVILLE</b>		<b>TOTAL</b>
	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>	
All roadway work excluding the following	\$5,883,439	100%		N/A%	\$5,883,439
P&C Engineering (15%)	\$882,516	100%		N/A%	\$882,516
<b>OTHER WORK</b>					
Installation of New Trees		N/A%	\$45,100	100%	\$45,100
P&C Engineering (15%)		N/A%	\$6,765	100%	\$6,765
Stamp PCC Median		N/A%	\$79,345	100%	\$79,345
P&C Engineering (15%)		N/A%	11,902	100%	\$11,902
<b>TOTAL</b>	<b>6,765,955</b>		<b>143,112</b>		<b>\$6,909,067</b>

NOTE: Participation shall be predicated upon the percentages shown above for the specified work. Estimated costs shall be updated upon award of the contract for the improvement, using contract unit prices and quantities. Final costs shall be determined by multiplying the final quantities times contract unit prices, plus 15% for construction engineering unless otherwise noted.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE APPROPRIATION  
OF FUNDS IN FISCAL YEAR 2013 FOR THE  
IMPROVEMENT OF ILLINOIS ROUTE 83  
(IDOT CONTRACT 60V54)**

**WHEREAS**, the Village of Bensenville (hereinafter the “Village”) has entered into an Agreement with the State of Illinois for the improvement of IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, and

**WHEREAS**, in compliance with the aforementioned Agreement, it is necessary for the Village to appropriate sufficient funds to pay its share of the cost of said improvement.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

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

**SECTION TWO:** That there is hereby appropriated the sum of One Hundred Forty Three Thousand One Hundred Twelve dollars (\$143,112), or so much thereof as may be necessary, from any money now or hereinafter allotted to the Village to pay its share of the cost of this improvement as provided in the Agreement.

**SECTION THREE:** That upon award of the contract for this improvement, the Village will pay to the State of Illinois in a lump sum from any funds allotted to the Village an amount equal to eighty percent (80%) of its obligation incurred under this agreement, and will pay to the State of Illinois the remainder of the obligation in a lump sum, upon completion of the project based on final costs.

**SECTION FOUR:** That the Village agrees to pass a supplemental resolution to provide any necessary funds for its share of the cost of this improvement if the amount appropriated herein proves to be insufficient to cover said cost.

**SECTION FIVE:** This Resolution shall be in full force and effect upon its passage and approval as required by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_ day of January, 2013.

APPROVED:

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Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES: \_\_\_\_\_

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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE RESTRICTING PARKING ALONG  
IL ROUTE 83 WITHIN THE VILLAGE OF BENSENVILLE  
(IDOT CONTRACT 60V54)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FA9 Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, in the Village of Bensenville; and

WHEREAS, a portion of this project runs through the Village of Bensenville; and

WHEREAS, in order to facilitate the free flow of traffic and to ensure the safety of the motoring public, the Village Board of the Village of Bensenville has determined that parking along IL Route 83 in the vicinity of the improvement described herein shall be prohibited.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** That parking shall be prohibited along IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, within the Village limits of the Village of Bensenville.

**SECTION TWO:** That the Village Board of the Village of Bensenville will prohibit future parking at such locations on or immediately adjacent to IL Route 83 as may be determined and directed by the State of Illinois to be necessary to ensure the free flow of traffic and safety to the motoring public.

**SECTION THREE:** The Village Clerk is hereby authorized and directed to attach a copy of this Ordinance to the AGREEMENT dated \_\_\_\_\_, 2013 by and between the State of Illinois and the Village of Bensenville.

**SECTION FOUR:** This Ordinance shall be in full force and effect from and after its

passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

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Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROHIBITING ENCROACHMENTS  
WITHIN THE STATE OF ILLINOIS RIGHT OF WAY  
ALONG IL ROUTE 83 – FAP 344  
(IDOT CONTRACT 60V54)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, in the Village of Bensenville; and

WHEREAS, said project is being constructed in order to facilitate the free flow of traffic and to ensure safety to the motoring public; and

WHEREAS, a portion of the project passes through the Village of Bensenville.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** That no person, firm, corporation or other entity shall install, place, maintain or construct any structure that encroaches upon the State of Illinois right of way on IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, within the limits of the Village of Bensenville.

**SECTION TWO:** The Village Clerk of the Village of Bensenville is hereby authorized and directed to attach a copy of this Ordinance to the agreement dated \_\_\_\_\_, 2013, by and between the State of Illinois and the Village of Bensenville relative to the improvement of IL Route 83, FAP 344.

**SECTION THREE:** This Ordinance shall be in full force and effect from and after its passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROHIBITING THE DISCHARGE  
OF SANITARY AND INDUSTRIAL WASTE  
INTO ANY STORM SEWER OR DRAINAGE FACILITY  
CONSTRUCTED AS A PART OF THE  
IL ROUTE 83 – FAP 344 IMPROVEMENT  
(IDOT CONTRACT 60V54)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, within the Village limits of the Village of Bensenville; and

WHEREAS, said project includes the installation of storm sewers, sanitary sewers, and drainage facilities; and

WHEREAS, a portion of the project runs through the Village of Bensenville, including the installation of storm drains and drainage facilities.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** No person, firm, corporation or other entity shall discharge any sanitary waste or industrial waste water into any storm sewer or drainage facility constructed as part of the IL Route 83, (FAP Route 344), State Section 540R-RS-3, State Job Number: C-91-003-13, which passes through the Village of Bensenville.

**SECTION TWO:** The Village Clerk of the Village of Bensenville is authorized and directed to attach a copy of this Ordinance to the agreement dated \_\_\_\_\_, 2013, by and between the State of Illinois and the Village of Bensenville relative to the improvement.

**SECTION THREE:** This Ordinance shall be in full force and effect from and after its passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING THE VILLAGE OF BENSENVILLE  
TO ENTER INTO AN AGREEMENT WITH THE  
STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION  
CONCERNING ROAD IMPROVEMENTS TO ILLINOIS ROUTE 83  
(IDOT CONTRACT 60N49)**

**WHEREAS**, the VILLAGE OF BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the VILLAGE is empowered to make all agreements and contracts necessary in the exercise of its statutory powers; and

**WHEREAS**, the VILLAGE has been approached by the Department of Transportation of the State of Illinois to enter into an Agreement with it relative to improvements the State plans to make to Illinois Route 83 (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11; and

**WHEREAS**, Village staff has reviewed the Agreement tendered by the State of Illinois for the purpose set forth herein and recommends that it be approved by the Village in the form of Agreement attached hereto and incorporated herein by reference as Exhibit "1;" and

**WHEREAS**, the President and Board of Village Trustees have reviewed the Agreement and have determined that it is reasonable, necessary, and desirable for the VILLAGE to enter into the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Village Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

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

**SECTION TWO:** The Village President is hereby authorized and directed, on behalf of the Village of Bensenville, to execute and take all other necessary actions, either in his own person or by his designee, to effect the Village's entry into the Agreement in Exhibit "1," and the Village Clerk is hereby authorized to attest to the same as may be required.

**SECTION THREE:** This Resolution shall take effect immediately upon its passage and approval as provided by law, and all resolutions in conflict herewith are repealed to the extent of their conflict.

**PASSED AND APPROVED** by the President and Board of Village Trustees of the Village of Bensenville, Illinois, this \_\_ day of March, 2013.

APPROVED:

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Frank Soto, Village President

ATTEST:

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Susan Janowiak, Village Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

FAP Route 344  
State Section: 540R-RS-2  
County: Cook/DuPage  
Contract No.: 60N49  
Job No. : C-91-319-11  
Agreement Number: JN-113-042

## AGREEMENT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 A.D., by and between the STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION hereinafter called the STATE, and the VILLAGE of BENSENVILLE of the State of Illinois, hereinafter called the VILLAGE.

### WITNESSETH:

WHEREAS, the STATE in order to facilitate the free flow of traffic and ensure safety to the motoring public, is desirous of improving approximately 22,249 feet of Illinois Route 83, FAP Route 344, STATE Job No.: C-91-319-11, State Contract Number: 60N49, STATE Section: 540R-RS-2, by milling, and resurfacing, IL Route 83, from Illinois Route 72 (Oakton Street) to Illinois Route 19 (Irving Park Road). This is a resurfacing (3P) project in which the work includes Class D patching, HMA surface removal (2 1/2"), Placement of polymerized HMA surface course, SMA (2) and polymerized leveling binder (1") throughout the project limits. Other work includes drainage structure adjustments, reconstructions, and cleaning, placement of concrete, seeded and landscaped medians, removal and replacement of raised reflective pavement markers, thermoplastic pavement markings and detector loops throughout the limits of resurfacing. The project also includes drainage improvements between Devon Avenue and Mark Avenue and the

extensions of the existing left turn lanes at various intersections throughout the project limits and by performing all other work necessary to complete the improvement in accordance with the approved plans and specifications; and

WHEREAS, the VILLAGE is desirous of said improvement in that same will be of immediate benefit to the VILLAGE residents and permanent in nature;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The STATE agrees to make the surveys, obtain all necessary rights of way, prepare plans and specifications, receive bids and award the contract, furnish engineering inspection during construction and cause the improvement to be built in accordance with the approved plans, specifications and contract.
2. The STATE agrees to pay for all right of way, construction and engineering cost subject to reimbursement by the VILLAGE, as hereinafter stipulated.
3. It is mutually agreed by and between the parties hereto that the estimated cost and cost proration for this improvement is as shown on Exhibit A.
4. The VILLAGE passed a resolution appropriating sufficient funds to pay its share of the cost for this improvement, a copy of which is attached hereto as "Exhibit B" and made a part hereof.
5. The VILLAGE further agrees that upon award of the contract for this improvement, the VILLAGE will pay to the STATE in a lump sum from any funds allotted to the VILLAGE, an amount equal to 80% of its obligation incurred under this AGREEMENT, and will pay to said STATE the remainder of the obligation (including any non-participating costs on FA Projects) in a lump sum, upon completion of the project based upon final costs.

6. The VILLAGE further agrees to pass a supplemental resolution to provide necessary funds for its share of the cost of this improvement if the amount appropriated in "Exhibit B" proves to be insufficient, to cover said cost.
7. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, requiring that parking be prohibited within the limits of this improvement, a copy of which is attached hereto as "Exhibit C", and will in the future prohibit parking at such locations on or immediately adjacent to this improvement as may be determined necessary by the STATE from traffic capacity studies.
8. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, prohibiting the discharge of sanitary sewage and industrial waste water into any storm sewers constructed as a part of this improvement, a copy of which is attached hereto as "Exhibit D".
9. Prior to the STATE advertising for the work proposed hereunder, the disposition of encroachments will be cooperatively resolved with representatives from the VILLAGE and the STATE.
10. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, relative to the disposition of encroachments and prohibiting in the future, any new encroachments within the limits of the improvements, a copy of which is attached as "Exhibit E".
11. The VILLAGE has adopted a resolution, will send a letter, or sign the Plan Approval page which is part of this document, prior to the STATE advertising for

the work to be performed hereunder, approving the plans and specifications as prepared.

12. The VILLAGE agrees not to permit driveway entrance openings to be made in the curb, as constructed, or the construction of additional entrances, private or commercial, along Illinois Route 83 without the consent of the STATE.
13. The VILLAGE shall exercise its franchise rights to cause private utilities to be relocated, if required, at no expense to the STATE.
14. The VILLAGE agrees to cause its utilities installed on right of way after said right of way was acquired by the STATE or installed within the limits of a roadway after the said roadway's jurisdiction was assumed by the STATE, to be relocated and/or adjusted, if required, at no expense to the STATE.
15. All VILLAGE owned utilities, on STATE right of way within the limits of this improvement, which are to be relocated/adjusted under the terms of this Agreement, will be relocated/adjusted in accordance with the applicable portions of the "Accommodation of Utilities of Right of Way of the Illinois State Highway System." (92 Ill. Adm. Code 530).
16. The VILLAGE agrees to obtain from the STATE an approved permit for any VILLAGE owned utility relocated/adjusted as part of this improvement, and shall abide by all conditions set forth therein.
17. Upon final field inspection of the improvement and so long as Illinois Route 83 is used as a STATE Highway, the STATE agrees to maintain or cause to be maintained the through traffic lanes lying on either side of the median, the left-turn turn lanes and right turn lanes, each lane being 12 feet and variable in width and the curb and gutter.
18. Upon final field inspection of the improvement, the VILLAGE agrees to maintain or cause to be maintained those portions of the improvement which are not maintained by the STATE, including colored and stamped decorative median,

~~parkways, median landscaping, guardrails, crosswalk and stopline markings, VILLAGE owned utilities including appurtenances thereto, and shall maintain the storm sewers and appurtenances by performing those functions necessary to keep the sewer in a serviceable condition including cleaning sewer lines, inlets, manholes, and catch basins along with the repair or replacement of inlet, manhole and catch basins' frames, grates or lids.~~ The maintenance, repair and/or reconstruction of storm sewers constructed as part of this improvement beyond the aforescribed responsibilities shall be that of the STATE.

19. The VILLAGE further agrees to continue its existing maintenance responsibilities on all side road approaches under its jurisdiction, including all left and right turn lanes on said side road approaches, up to the through edge of pavement of Illinois Route 83. Drainage facilities, if any, at the aforementioned side roads located within the STATE right-of-way shall be the joint maintenance responsibility of the STATE and the VILLAGE unless there is an agreement specifying different responsibilities.

Obligations of the STATE and the VILLAGE, will cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or Federal funding source fails to appropriate or otherwise make available funds for this contract.

This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within the three years subsequent to execution of the agreement.

This Agreement shall be binding upon and to the benefit of the parties hereto, their successors and assigns.

VILLAGE OF BENSENVILLE

Attest:

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Susan Janowiak  
Village Clerk  
Village of Bensenville

(SEAL)

By: \_\_\_\_\_  
Frank Soto  
Village President  
Village of Bensenville

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

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
John Fortmann, P.E.  
Acting Deputy Director  
Region One Engineer

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

Job No.: C-91-319-11  
Agreement No.: JN-113-042

## PLAN APPROVAL

WHEREAS, in order to facilitate the improvement of FAP Route 344 known as Illinois Route 83, State Section: 540R-RS-2, the VILLAGE agrees to that portion of the plans and specifications relative to the VILLAGE's financial and maintenance obligations described herein, prior to the STATE's advertising for the aforescribed proposed improvement.

Approved\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**CONTRACT 60N49**  
**ESTIMATE OF COST & PARTICIPATION**

<b>Type of Work</b>	<b>STATE</b>		<b>VILLAGE OF BENSENVILLE</b>		<b>TOTAL</b>
	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>%</b>	
All roadway work excluding the following	\$7,233,127	100%		N/A%	\$7,233,127
P&C Engineering (15%)	\$1,084,969	100%		N/A%	\$1,084,969
<b>OTHER WORK</b>					
Installation of New Trees		N/A%	\$31,680	100%	\$31,680
P&C Engineering (15%)		N/A%	\$4,752	100%	\$4,752
Stamp PCC Median		N/A%	\$87,696	100%	\$87,696
P&C Engineering (15%)		N/A%	13,154	100%	\$13,154
<b>TOTAL</b>	<b>8,318,096</b>		<b>137,282</b>		<b>\$8,455,378</b>

NOTE: Participation shall be predicated upon the percentages shown above for the specified work. Estimated costs shall be updated upon award of the contract for the improvement, using contract unit prices and quantities. Final costs shall be determined by multiplying the final quantities times contract unit prices, plus 15% for construction engineering unless otherwise noted.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE APPROPRIATION  
OF FUNDS IN FISCAL YEAR 2013 FOR THE  
IMPROVEMENT OF ILLINOIS ROUTE 83  
(IDOT CONTRACT 60N49)**

**WHEREAS**, the Village of Bensenville (hereinafter the “Village”) has entered into an Agreement with the State of Illinois for the improvement of IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, and

**WHEREAS**, in compliance with the aforementioned Agreement, it is necessary for the Village to appropriate sufficient funds to pay its share of the cost of said improvement.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

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

**SECTION TWO:** That there is hereby appropriated the sum of One Hundred Thirty Seven Thousand Two Hundred Eighty Two dollars (\$137,282), or so much thereof as may be necessary, from any money now or hereinafter allotted to the Village to pay its share of the cost of this improvement as provided in the Agreement.

**SECTION THREE:** That upon award of the contract for this improvement, the Village will pay to the State of Illinois in a lump sum from any funds allotted to the Village an amount equal to eighty percent (80%) of its obligation incurred under this agreement, and will pay to the State of Illinois the remainder of the obligation in a lump sum, upon completion of the project based on final costs.

**SECTION FOUR:** That the Village agrees to pass a supplemental resolution to provide any necessary funds for its share of the cost of this improvement if the amount appropriated herein proves to be insufficient to cover said cost.

**SECTION FIVE:** This Resolution shall be in full force and effect upon its passage and approval as required by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_ day of January, 2013.

APPROVED:

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Frank Soto, Village President

ATTEST:

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Susan Janowiak, Village Clerk

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

NAYES: \_\_\_\_\_

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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE RESTRICTING PARKING ALONG  
IL ROUTE 83 WITHIN THE VILLAGE OF BENSENVILLE  
(IDOT CONTRACT 60N49)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FA9 Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, in the Village of Bensenville; and

WHEREAS, a portion of this project runs through the Village of Bensenville; and

WHEREAS, in order to facilitate the free flow of traffic and to ensure the safety of the motoring public, the Village Board of the Village of Bensenville has determined that parking along IL Route 83 in the vicinity of the improvement described herein shall be prohibited.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** That parking shall be prohibited along IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, within the Village limits of the Village of Bensenville.

**SECTION TWO:** That the Village Board of the Village of Bensenville will prohibit future parking at such locations on or immediately adjacent to IL Route 83 as may be determined and directed by the State of Illinois to be necessary to ensure the free flow of traffic and safety to the motoring public.

**SECTION THREE:** The Village Clerk is hereby authorized and directed to attach a copy of this Ordinance to the AGREEMENT dated \_\_\_\_\_, 2013 by and between the State of Illinois and the Village of Bensenville.

**SECTION FOUR:** This Ordinance shall be in full force and effect from and after its

passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

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Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROHIBITING THE DISCHARGE  
OF SANITARY AND INDUSTRIAL WASTE  
INTO ANY STORM SEWER OR DRAINAGE FACILITY  
CONSTRUCTED AS A PART OF THE  
IL ROUTE 83 – FAP 344 IMPROVEMENT  
(IDOT CONTRACT 60N49)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, within the Village limits of the Village of Bensenville; and

WHEREAS, said project includes the installation of storm sewers, sanitary sewers, and drainage facilities; and

WHEREAS, a portion of the project runs through the Village of Bensenville, including the installation of storm drains and drainage facilities.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** No person, firm, corporation or other entity shall discharge any sanitary waste or industrial waste water into any storm sewer or drainage facility constructed as part of the IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, which passes through the Village of Bensenville.

**SECTION TWO:** The Village Clerk of the Village of Bensenville is authorized and directed to attach a copy of this Ordinance to the agreement dated \_\_\_\_\_, 2013, by and between the State of Illinois and the Village of Bensenville relative to the improvement.

**SECTION THREE:** This Ordinance shall be in full force and effect from and after its passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE PROHIBITING ENCROACHMENTS  
WITHIN THE STATE OF ILLINOIS RIGHT OF WAY  
ALONG IL ROUTE 83 – FAP 344  
(IDOT CONTRACT 60N49)**

WHEREAS, the State of Illinois, acting by and through its Department of Transportation, is desirous of improving IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, in the Village of Bensenville; and

WHEREAS, said project is being constructed in order to facilitate the free flow of traffic and to ensure safety to the motoring public; and

WHEREAS, a portion of the project passes through the Village of Bensenville.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

**SECTION ONE:** That no person, firm, corporation or other entity shall install, place, maintain or construct any structure that encroaches upon the State of Illinois right of way on IL Route 83, (FAP Route 344), State Section 540R-RS-2, State Job Number: C-91-319-11, within the limits of the Village of Bensenville.

**SECTION TWO:** The Village Clerk of the Village of Bensenville is hereby authorized and directed to attach a copy of this Ordinance to the agreement dated \_\_\_\_\_, 2013, by and between the State of Illinois and the Village of Bensenville relative to the improvement of IL Route 83, FAP 344.

**SECTION THREE:** This Ordinance shall be in full force and effect from and after its passage and approval according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of January, 2013.

---

Frank Soto, Village President

ATTEST:

---

Susan Janowiak, Village Clerk

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

NAYES:\_\_\_\_\_

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

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FAP Route 344  
State Section: 540R-RS-3  
County: DuPage  
Job No. : C-91-003-13  
Contract No.: 60V54

## AGREEMENT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, A.D, by and between the STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION hereinafter called the STATE, and the VILLAGE of BENSENVILLE of the State of Illinois, hereinafter called the VILLAGE.

### WITNESSETH:

WHEREAS, the STATE in order to facilitate the free flow of traffic and ensure safety to the motoring public, is desirous of improving approximately 18,419 feet of Illinois Route 83, FAP Route 344, STATE Job No.: C-91-003-13, State Contract Number: 60V54, STATE Section: 540R-RS-3 by resurfacing, Illinois Route 83, from Illinois Route 19 (Irving Park Road) to Illinois Route 64 (North Avenue) and by performing all other work necessary to complete the improvement in accordance with the approved plans and specifications; and

This is a resurfacing (3P) project in which the work includes Class D patching, HMA surface removal (2 ½"), placement of polymerized HMA surface course, SMA (2") and polymerized leveling binder (1") throughout the project limits. Other work includes drainage structures adjustments, reconstruction, and cleaning, placement of concrete, seeded and landscaped medians, removal and replacement of raised reflective pavement markers, thermoplastic pavement markings and detector loops throughout the limits of resurfacing.

WHEREAS, the VILLAGE is desirous of said improvement in that same will be of immediate benefit to the VILLAGE residents and permanent in nature;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The STATE agrees to make the surveys, obtain all necessary rights of way, prepare plans and specifications, receive bids and award the contract, furnish engineering inspection during construction and cause the improvement to be built in accordance with the approved plans, specifications and contract.
2. The STATE agrees to pay for all right of way, construction and engineering cost subject to reimbursement by the VILLAGE, as hereinafter stipulated.
3. It is mutually agreed by and between the parties hereto that the estimated cost and cost proration for this improvement is as shown on Exhibit A.
4. The VILLAGE has passed a resolution appropriating sufficient funds to pay its share of the cost for this improvement, a copy of which is attached hereto as "Exhibit A" and made a part hereof.
5. The VILLAGE further agrees that upon award of the contract for this improvement, the VILLAGE will pay to the STATE in a lump sum from any funds allotted to the VILLAGE, an amount equal to 80% of its obligation incurred under this AGREEMENT, and will pay to said STATE the remainder of the obligation (including any non-participating costs on FA Projects) in a lump sum, upon completion of the project based upon final costs.

6. The VILLAGE further agrees to pass a supplemental resolution to provide necessary funds for its share of the cost of this improvement if the amount appropriated in "Exhibit B" proves to be insufficient, to cover said cost.
7. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, requiring that parking be prohibited within the limits of this improvement, a copy of which is attached hereto as "Exhibit C", and will in the future prohibit parking at such locations on or immediately adjacent to this improvement as may be determined necessary by the STATE from traffic capacity studies.
8. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, prohibiting the discharge of sanitary sewage and industrial waste water into any storm sewers constructed as a part of this improvement, a copy of which is attached hereto as "Exhibit D".
9. Prior to the STATE advertising for the work proposed hereunder, the disposition of encroachments will be cooperatively resolved with representatives from the VILLAGE and the STATE.
10. The VILLAGE has adopted and will put into effect an appropriate ordinance, prior to the STATE's advertising for the proposed work to be performed hereunder, or shall continue to enforce an existing ordinance, relative to the disposition of

encroachments and prohibiting in the future, any new encroachments within the limits of the improvements, a copy of which is attached as "Exhibit E".

11. The VILLAGE has adopted a resolution, will send a letter, or sign the Plan Approval page which is part of this document, prior to the STATE advertising for the work to be performed hereunder, approving the plans and specifications as prepared.
12. The VILLAGE agrees not to permit driveway entrance openings to be made in the curb, as constructed, or the construction of additional entrances, private or commercial, along Illinois Route 83 without the consent of the STATE.
13. The VILLAGE shall exercise its franchise rights to cause private utilities to be relocated, if required, at no expense to the STATE.
14. The VILLAGE agrees to cause its utilities installed on right of way after said right of way was acquired by the STATE or installed within the limits of a roadway after the said roadway's jurisdiction was assumed by the STATE, to be relocated and/or adjusted, if required, at no expense to the STATE.
15. All VILLAGE owned utilities, on STATE right of way within the limits of this improvement, which are to be relocated/adjusted under the terms of this Agreement, will be relocated/adjusted in accordance with the applicable portions of the "Accommodation of Utilities of Right of Way of the Illinois State Highway System." (92 Ill. Adm. Code 530).

16. The VILLAGE agrees to obtain from the STATE an approved permit for any VILLAGE owned utility relocated/adjusted as part of this improvement, and shall abide by all conditions set forth therein.
17. Upon final field inspection of the improvement and so long as Illinois Route 83 is used as a STATE Highway, the STATE agrees to maintain or cause to be maintained the through traffic lanes, the left-turn turn lanes and right turn lanes, each lane being 12 feet and variable in width, and the curb and gutter and stabilized shoulders.
18. Upon final field inspection of the improvement, the VILLAGE agrees to maintain or cause to be maintained those portions of the improvement which are not maintained by the STATE, including ~~sidewalks, colored and stamped decorative medians, parkways, median landscaping, guardrails, crosswalk and stopline markings, VILLAGE owned utilities including appurtenances thereto, and shall maintain the storm sewers and appurtenances by performing those functions necessary to keep the sewer in a serviceable condition including cleaning sewer lines, inlets, manholes, and catch basins along with the repair or replacement of inlet, manhole and catch basins' frames, grates or lids.~~ The maintenance, repair and/or reconstruction of storm sewers constructed as part of this improvement beyond the aforesubscribed responsibilities shall be that of the STATE.

19. The VILLAGE further agrees to continue its existing maintenance responsibilities on all side road approaches under its jurisdiction, including all left and right turn lanes on said side road approaches, up to the through edge of pavement of Illinois Route 83. Drainage facilities, if any, at the aforementioned side roads located within the STATE right-of-way shall be the joint maintenance responsibility of the STATE and the VILLAGE unless there is an agreement specifying different responsibilities.

Obligations of the STATE and the VILLAGE will cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or Federal funding source fails to appropriate or otherwise make available funds for this contract.

This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within the three years subsequent to execution of the agreement.

This Agreement shall be binding upon and to the benefit of the parties hereto, their successors and assigns.

VILLAGE OF BENSENVILLE

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

Attest:

By: \_\_\_\_\_  
(Print or Type)

\_\_\_\_\_  
Clerk

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

(SEAL)

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

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
John Fortmann, P.E.  
Acting Deputy Director of Highways  
Region One Engineer

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

Job No.: C-91-003-13  
Agreement No.: JN-113-044

## PLAN APPROVAL

WHEREAS, in order to facilitate the improvement of Illinois Route 83 known as FAP Route 344, State Section: 540R-RS-3, the VILLAGE agrees to that portion of the plans and specifications relative to the VILLAGE's financial and maintenance obligations described herein, prior to the STATE's advertising for the aforescribed proposed improvement.

Approved \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**EXHIBIT A**  
**ESTIMATE OF COST & PARTICIPATION**

				<b>CONTRACT 60V54</b>	
<b>Type of Work</b>	<b>STATE</b>	<b>VILLAGE OF BENSENVILLE</b>		<b>TOTAL</b>	
	\$	%	\$	%	
All roadway work excluding the following	\$5,883,439	100%			
P&C Engineering (15%)	\$882,516	100%			
<b>OTHER WORK</b>					
Installation of New Trees		N/A%	\$48,100	100%	\$48,100
P&C Engineering (15%)		N/A%	\$7,215	100%	\$7,215
Stamp PCC Median		N/A%	\$79,345	100%	\$79,345
P&C Engineering (15%)		N/A%	11,902	100%	\$11,902
<b>TOTAL</b>	<b>6,765,955</b>		<b>146,562</b>		<b>\$6,912,517</b>

NOTE: Participation shall be predicated upon the percentages shown above for the specified work. Estimated costs shall be updated upon award of the contract for the improvement, using contract unit prices and quantities. Final costs shall be determined by multiplying the final quantities times contract unit prices, plus 15% for construction engineering unless otherwise noted.