

In light of the current COVID-19 public health emergency, Governor J.B. Pritzker’s Gubernatorial Disaster Proclamation, and the Village’s Continuation of Proclamation of Local Disaster Emergency in response thereto, the Village President has determined that an entirely in-person meeting is not practical or prudent because of the disaster. This meeting will be held remotely and in-person, but there will be a limit of twelve (12) in-person seats available for the public in the Village Board Room. The following information is being made available to the public for the purpose of public participation in the spirit of transparency and an open meeting process.

The complete Village Board packet is posted at the Algonquin Village Hall and may be viewed online via the Village Board’s link on the Village’s website, www.algonquin.org. If you would like to listen to the meeting, please go to <https://algonquin.zoom.us/j/94831328322> or dial in (877)853-5257 or (888)475-4499 webinar ID **948 3132 8322**. If you wish to submit any public comment, please contact the Deputy Village Clerk in advance of the meeting at 847-658-5609 or meetingcomments@algonquin.org or during the to comment during the meeting public comment portion of the meeting after logging into the zoom meeting, please raise your hand and you will be called on, if you are dialing in, dial *9 to raise your hand. The Village will attempt to read such public comments during the public commentary portion of the meeting. Any comments received during the meeting but after the public commentary portion has ended will be provided in writing to the Village Board members after the meeting.

Remote meetings will be recorded for the purpose of accurate meeting minutes.

AGENDA
COMMITTEE OF THE WHOLE
SEPTEMBER 8, 2020
2200 Harnish Drive
Village Board Room
- AGENDA -
7:30 P.M.

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

1. **Roll Call – Establish Quorum**
2. **Public Comment – Audience Participation**
(Persons wishing to address the Committee must register with the Chair prior to roll call.)
3. **The Village of Algonquin Proclaims September 14-18, 2020 Chamber of Commerce Week**
4. **Community Development**
5. **General Administration**
 - A. Consider an Amendment to the Personnel Policy Manual
 - B. Consider an Ordinance Allowing the Village to Participate in the Local CURE Program
6. **Public Works & Safety**
 - A. Consider an Agreement with Christopher Burke Engineering for Inspection Services for the Trails of Woods Creek Development
 - B. Consider an Agreement with Burke LLC. for Design, Management, and Construction of the Wayfinding Signage Project
 - C. Consider Amending Chapter 43.23, Smoke Free Village and Chapter 43.40, Sale of Tobacco, of the Algonquin Municipal Code
7. **Executive Session**
8. **Other Business**
9. **Adjournment**

PROCLAMATION

CHAMBER OF COMMERCE WEEK

Whereas, the Algonquin Lake in the Hills Chamber of Commerce works with the businesses, merchants, and industry to advance the civic, economic, industrial, professional and cultural life of the Village of Algonquin, and

Whereas, chambers of commerce have contributed to the civic and economic life of Illinois for 182 years since the founding of the Galena Chamber of Commerce in 1838, and

Whereas, this year marks the 101st anniversary of the founding of the Illinois Chamber of Commerce, the state's leading broad-based business organization;

Whereas, the chamber of commerce and its members provide citizens with a strong business environment that increases employment, the retail trade and commerce, and industrial growth in order to make the Village of Algonquin a better place to live, and

Whereas, the chamber of commerce encourages the growth of existing industries, services, and commercial firms and encourages new firms and individuals to locate in the Village of Algonquin, and

Whereas, the State of Illinois is the home to international chambers of commerce, the Great Lakes Region Office of the U.S. Chamber of Commerce, the Illinois Chamber of Commerce and more than 400 local chambers of commerce, and

Whereas, this year marks the 105th anniversary of the Illinois Association of Chamber of Commerce Executives, a professional development organization for the chamber of commerce professionals;

Therefore, I, Debby Sosine, Acting Village President of the Village of Algonquin, proclaims **September 14 through September 18, 2020, as CHAMBER OF COMMERCE WEEK** in the Village of Algonquin and call its significance to the citizens of the Village of Algonquin.

Whereunto I have set my hand on this and caused the seal of the Village of Algonquin to be affixed.

Dated this 8th Day of September, 2020

Seal

Acting Village President, Debby Sosine

Gerald S. Kautz, Village Clerk

by: _____
Michelle Weber, Deputy Clerk



***VILLAGE OF ALGONQUIN
MEMORANDUM***

DATE: August 28, 2020

TO: Tim Schloneger, Village Manager

FROM: Todd A. Walker, Human Resources Director SPHR

SUBJECT: Revisions to Appendix F in the Personnel Policy Manual

Dear Board Members,

As you know, in an effort to stay up-to-date on our required state and federal mandates we must adjust our policies from time to time.

Since our last Personnel Policy Manual update in 2017, there have been significant changes to our harassment policy language and training obligations. Because the Village Board previously approved the prior policy (Appendix F in the Personnel Policy Manual), the Board would need to approve the attached to replace our current appendix.

Attached are two documents for your consideration. A redline version indicating the actual deletions and additions made and a clean final version. As usual, you are welcome to call me with any questions. I will also be available during the COW meeting to address any questions you might have.

Thanks in advance.

TAW/taw

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

Section 14.1. Introduction.

The Village desires to have a professional working environment for its employees so they may carry out their duties in productive and positive surroundings. Although conduct may not rise to the level of unlawful harassment from a legal perspective, the Village wants to protect its employees from abuse and to prevent conduct from becoming so severe or pervasive as to alter the conditions of an employee's employment, create an abusive, intimidating or hostile working environment, or result in a tangible employment action. Accordingly, the Village has adopted a "zero tolerance" policy against harassment. Harassment is unwarranted and unwanted verbal or nonverbal conduct that threatens, intimidates, annoys or insults another person where such conduct has the purpose or effect of creating an offensive, intimidating, degrading and/or hostile working environment and/or interferes with and/or adversely affects a person's performance. The Village prohibits any form of unlawful harassment against its employees and applicants for employment based on actual or perceived factors such as sex (including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions), marital status, order of protection status, sexual orientation or preference, gender identity whether or not traditionally associated with the person's designation at birth, race, color, creed, religion, national origin, ancestry, age, mental or physical disability, military status, unfavorable discharge from military service, citizenship status, or other status protected by applicable law.

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Section 14.2. Sexual Harassment.

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

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

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

- Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of

electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

- Stalking: a course of conduct directed at a specific person that involves repeated (two or more occasions) visual or physical proximity, nonconsensual communication, or verbal, written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

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

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

Section 14.3. Other Forms of Harassment.

With respect to other forms of harassment, the Village prohibits slurs or other verbal or physical conduct relating to matters such as an individual's actual or perceived race, color, creed, religion, national origin, ancestry, marital status, order of protection status, pregnancy, military status, unfavorable discharge from military service, citizenship status, age, mental or physical disability, sexual orientation, gender identity whether or not traditionally associated with the person's designated sex at birth, or other protected status when this conduct:

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

Section 14.4. Coverage of the Policy.

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

2. Responsibilities:

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

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

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<#>Sexually suggestive touching, gestures, or sounds.¶
<#>Grabbing, groping, kissing, or fondling.¶
<#>Lewd, off-color, sexually oriented comments or jokes.¶
<#>Suggestive or sexually explicit posters, calendars, photographs, graffiti, or cartoons.¶
<#>Unwanted or offensive letters, memos, or poems.¶
<#>Offensive e-mail, voice-mail or text messages.¶
<#>Sexually oriented or explicit remarks, including written or verbal references to sexual conduct or gossip regarding one's sex life, body, sexual activities, deficiencies, or prowess.¶
<#>Questions about one's sex life or experiences. ¶
<#>Repeated requests for dates after having been turned down.¶
<#>Sexual favors in return for employment rewards, or threats if sexual favors are not provided.¶
<#>Sexual assault, rape, or other coerced sexual activity.¶

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

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

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

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

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

Section 14.5. Complaint Procedures. If an employee experiences any job-related harassment or believes that he or she has been subjected to harassment, the employee should promptly report to Human Resources Director. If an employee believes that the Human Resources Director is involved in the job-related harassment or is condoning it, or if the employee does not feel comfortable reporting the incident to the Human Resources Director, the employee should bypass the Human Resources Director, and report the alleged harassment directly to the Assistant Village Manager. If an employee believes that the Assistant Village Manager is involved in the job-related harassment or is condoning it, or if the employee wishes to report the incident to someone of the same sex, then the employee should report the alleged harassment to the Village Manager, Village President, Village Clerk or a member of the Board of Trustees.

If any Department Head or Supervisor learns of an incident of alleged harassment, it is that individual’s responsibility to immediately report the incident to the appropriate person under this policy. An investigation of the allegations of all complaints will be made as soon as practicable and, to the extent practicable and appropriate under the circumstances, confidentiality will be maintained. If the investigation leads to a determination that a complaint is well grounded and true, appropriate corrective action shall be taken. In determining whether alleged conduct constitutes harassment in violation of this policy and the appropriate steps to redress any such violations or avoid the possibility of a future occurrence, factors such as the nature of the alleged harassment, the context in which the alleged conduct occurred, and the totality of the facts and circumstances will be investigated and considered.

Section 14.6. Harassment Allegations by Elected Officials Against Other Elected Officials

Alleged harassment by one elected official against another can be reported to the Village President. If the Village President is the person reporting the harassment or is implicated by the allegation, the report can be made to any other Trustee. If a complaint is made against an elected official of the Village by another elected official of the Village under this Section, the matter must be referred to the Village’s legal counsel. The allegations of the

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complaint will be thoroughly investigated through an independent review, which may include referring the matter to a qualified, independent attorney or consultant to review and investigate the allegations. Further, reasonable remedial measures will be taken as determine by the other Trustees who are not the complainant or the official who is the subject of the complaint.

Section 14.7, Time Frame for Reporting Harassment.

The Village encourages prompt reporting of complaints so that rapid response and appropriate action may be taken. Thus, all complaints should be reported within six months of the alleged harassment. Delayed reporting of complaints will not, in and of itself, preclude the Village from taking remedial action.

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Section 14.8, No Retaliation.

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

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

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

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

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

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

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

(740 ILCS 174/15(b)).

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

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

Section 14.9. Importance of Reporting Harassment.

It is a core value of the Village that maintaining a professional working environment for its employees is central to its long-term success. The Village believes that only by having a professional working environment can employees carry out their duties in a productive and positive surrounding. When that environment is threatened by harassment, it threatens the stability of the Village to the detriment of all of its employees. Harassment often follows a pattern, and when it goes unreported by those who experience it, it may encourage the perpetrator to harass others. By failing to report harassment as required by this policy, an employee not only endangers himself or herself, but also others as well.

By enforcing this zero tolerance policy and appropriately investigating all reports of harassment, the Village seeks to protect all employees and maintain a harassment free, professional working environment. It is for these reasons, among others, that the Village's policy requires that, if an employee who suffers or experiences, or believes he or she will suffer or experience, any job-related harassment prohibited by this policy, the employee promptly report the incident.

Section 14.10. Disciplinary Action.

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

Section 14.11. Consequences for Knowingly Making a False Report of Sexual Harassment Pursuant to 5 ILCS 430/70-5

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

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's

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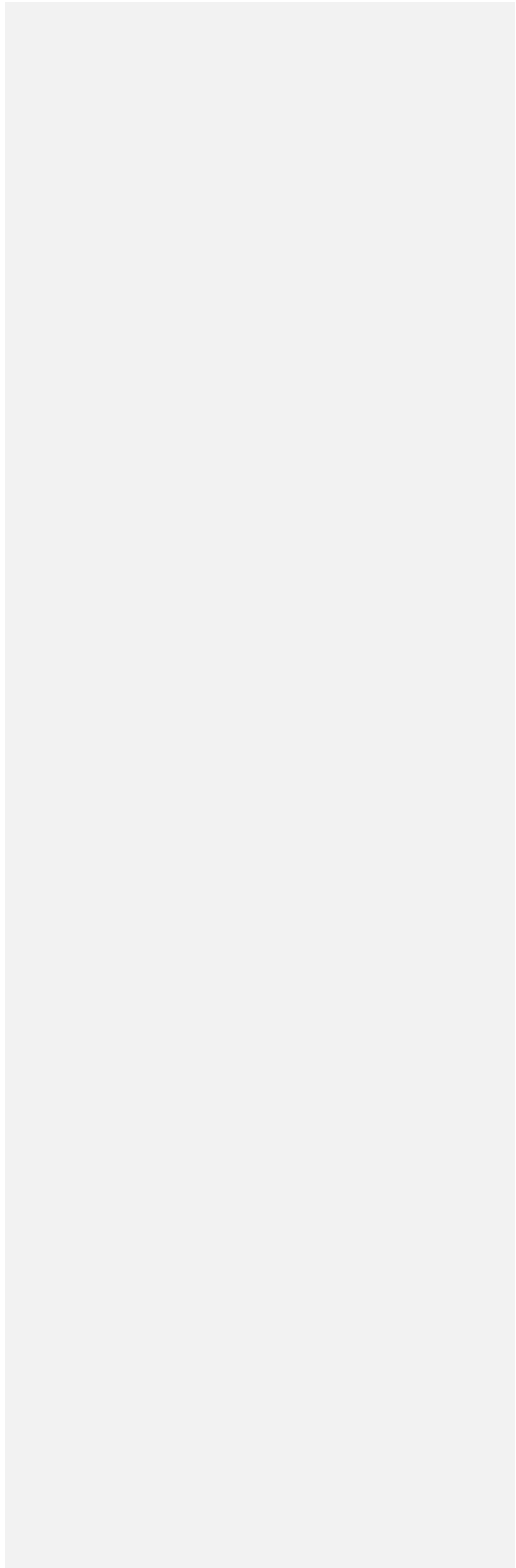
Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

Section 14.12, External Procedures.

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

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The IDHR may be conducted as follows:

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

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

The EEOC may be conducted as follows:

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

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



VILLAGE OF ALGONQUIN
GENERAL SERVICES ADMINISTRATION

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

DATE: September 2, 2020

TO: Tim Schloneger, Village Manager

FROM: Michael Kumbera, Assistant Village Manager

SUBJECT: *Local CURE Program*

The Local CURE program is an assistance program that applies to all units of local government outside of Cook, Lake, Will, Kane, and DuPage counties. This funding is federally funded from the Coronavirus Relief Fund using dollars allocated to Illinois through the CARES Act. CURE funding is administered by the Illinois Department of Commerce and Economic Opportunity (DCEO).

The Village of Algonquin has been allocated \$891,602 for COVID-related reimbursements through the Local CURE Program. As a reimbursement program, the Village must submit evidence of expenditures, along with meeting eligibility standards, prior to receiving the funds.

Staff recommends the Village Board approve an ordinance authorizing the Village to participate in the Local CURE Program.

ORDINANCE NO. 2020-O-

AN ORDINANCE PERTAINING TO THE LOCAL CURE PROGRAM

WHEREAS, the **Village of Algonquin**, McHenry and Kane Counties, Illinois, (**“Village”**) is an Illinois municipality, eligible for reimbursement of funds through the Local Coronavirus Urgent Remediation Emergency Support Program (Local CURE Program), 20 ILCS 605/605-1045; and

WHEREAS, the Local CURE Program is funded from financial assistance the State of Illinois received through the U.S. Department of the Treasury’s Coronavirus Relief Fund (CFDA No. 21.019) authorized under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief and Economic Security Act, P.L. 116-136 (**“CARES Act”**); and

WHEREAS, as a Local Government recipient of financial support through the Local CURE Program, the **Village** is required to utilize the financial support received from the Illinois Department of Commerce and Economic Opportunity (the **“Department”**) for the specific purposes and in compliance with the terms and certifications of the Local CURE Program; and

WHEREAS, the corporate authorities of the **Village** have determined that it is advisable, necessary and in the best interest of the **Village** to enter into the attached Local CURE Program Financial Support Conditions and Certification in order to participate in and receive the funding pursuant to the Local CURE Program.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

ARTICLE 1

The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

ARTICLE 2

The Financial Support Conditions and Certification in substantially the form of the exhibit attached hereto is hereby incorporated herein by reference, authorized and approved.

ARTICLE 3

The Acting Village President is hereby authorized to execute and deliver and the Village Clerk is hereby authorized to attest to said execution of said certification in substantially the form of the exhibit appended hereto as so authorized and approved for and on behalf of the **Village**.

ARTICLE 4

SEVERABILITY. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

ARTICLE 5

REPEAL OF CONFLICTING PROVISIONS. All ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

ARTICLE 6

EFFECTIVE DATE. This Ordinance shall be in full force and effect on September 15, 2020.

Passed the _____ day of _____, 2020.

AYES: _____

NAYS: _____

Absent: _____

Approved this ____ day of _____, 2020.

Acting Village President

ATTEST:

Village Clerk



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: August 26, 2020

TO: COTW

FROM: Robert Mitchard, Public Works Director

SUBJECT: Trails of Woods Creek

As you all know, the Village agreed to allow Pulte Homes to commence their mass earth moving (MEM) operations following the Committee of the Whole (COTW) approval of their proposed Trails of Woods Creek Subdivision.

In order to have them perform this work, we need [onsite](#) inspection of their proposed MEM plan and the ongoing public improvement (sewers, water main, streets, etc.) work once they commence. This work including tree protection of existing trees and trees removal could start as early as the week of August 24.

The Engineer's Opinion of Probable Cost (EOPC) for the entire development was sent to us in draft form on Friday August 21 and will need to be reviewed to ensure it includes all Public Improvements. The "draft" amount is \$9,838,869. The Construction Escrow amount the developer is required to post in accordance with the Village Code is 3% of that number or \$295,166.

The In-House Engineering team from CBBEL has been coordinating and handling the review of the engineering for this subdivision and we would like to contract with CBBEL for the inspection services for the public improvements. They have performed admirably in this capacity as they have with other developments.

The developer/builder pays the inspection fees by posting this escrow amount which is drawn down as services are rendered. Therefore, there is no cost to the Village of Algonquin.

We request approval of the attached Amendment to the Master Agreement with CBBEL in the amount not to exceed unless amended of \$295,166.00.

Please advise if you have any questions.

Consulting Engineering
Master Agreement Work Order Form

I. Incorporation of Master Agreement

All terms and conditions contained within the Village Engineer Master Agreement executed between the parties shall be applicable to the work to be performed under this Work Order and shall be deemed to be fully incorporated as if fully set forth herein.

II. Project Understanding

A. General Understanding/Assumptions

CBBEL understands that the Village would like CBBEL to provide on-site construction observation of site development activities, including all Public Improvements as shown on the approved Engineering Plans for the Trails of Woods Creek Development.

III. Scope of Services

A. Engineering Services

CBBEL will provide the services below to the Village:

▪ **Construction Inspection:**

1. Preconstruction Services

- Attend Pre-Construction Meeting with Developer, Contractor(s), Village Staff, Utility Company Representatives; Developer shall prepare a project contact list, including 24-hour emergency numbers, for distribution with the meeting minutes. Obtain from the Developer a list of proposed suppliers and subcontractors. Make recommendations to the Village regarding the suitability of the subcontractors for the proposed work.
- Developer will provide Utility Coordination (Nicor, ComEd, AT&T, Comcast, etc.).
- Review the construction schedule submitted by the Developer for compliance with the plans and specifications.

2. Shop Drawing Review

- Review of all submittals to ensure conformance with the requirements set forth in the Village Standards and Specifications.
- Shop Drawings and Contractor Submittals:
 - Record data received, maintain a file of drawings and submissions, and check construction for compliance with them.
 - 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.
- 3. Construction Observation – As-Needed / Required Observation and Assistance to Village Staff assigned to the project.
 - Develop and distribute regular Project Notifications (letters to impacted residents, businesses, schools, refuse and delivery companies, etcetera).
 - Construction Observation of Contractor Work to assist the Village observing improvements are constructed with minimal impact on the public and in general accordance with the project specifications; CBBEL shall keep the Village informed of the progress of the work, and advise the Village of all observed deficiencies of the work and disapprove all work failing to conform to the approved engineering plans.
 - Answering of questions and resolving issues and concerns from impacted property owners.
 - Enforcement of Storm-water Pollution Prevention Plan (SWPPP) to ensure compliance with IEPA NPDES Permit.
- 4. Materials QA
 - Performance of Quality Assurance Material Testing in conformance with Village requirements for QC/QA Material Testing.
 - CBBEL will utilize Rubino Engineering, Inc. for the material testing portions of this contract. Rubino will provide Quality Assurance (QA) testing as outlined by IDOT’s Bureau of Material and Physical Research, and further described in the Construction Manual.
 - The Resident Engineer provided by CBBEL will be familiar with the frequency of QA testing as required by IDOT as outlined in their Project Procedures Guide. The Resident Engineer will coordinate the QA material testing and review all required reports submitted by both the contractor’s QC sub-contractor and Rubino for compliance with the project specifications.
- 5. Closeout
 - Develop and ensure completion of “Punch List.”
 - Assist the Village with a Warranty review to identify and direct Contractor to address any issues that arise during warranty period.
 - Verify all necessary material inspection has been received and documented.

B. Meetings/Coordination

As needed basis.

C. Services by Others

As needed basis.

D. Not included in Work Order

N/A

IV. Man-Hour & Fee Summary

We will bill you on a time and materials basis at the rates specified on the attached Standard Charges for Professional Services for a not-to-exceed fee of \$295,166.00 unless otherwise authorized by the Village of Algonquin.

VILLAGE OF ALGONQUIN

Accepted by: _____

Title: _____

Date: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.

Accepted by:  _____ Michael Kerr

Title: President _____

Date: 8/26/2020 _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
VILLAGE OF ALGONQUIN

<u>Personnel</u>	<u>Charges</u> <u>(\$/Hr)</u>
Principal.....	210
Engineer VI.....	190
Engineer V.....	175
Engineer IV.....	145
Engineer III.....	125
Engineer I/II.....	100
Survey V.....	165
Survey IV.....	160
Survey III.....	155
Survey II.....	115
Survey I.....	90
Engineering Technician V.....	160
Engineering Technician IV.....	130
Engineering Technician III.....	140
Engineering Technician I/II.....	87
CAD Manager.....	160
Assistant CAD Manager.....	135
CAD II.....	125
GIS Specialist III.....	130
GIS Specialist I/II.....	85
Landscape Architect.....	150
Environmental Resource Specialist V.....	160
Environmental Resource Specialist IV.....	140
Environmental Resource Specialist III.....	110
Environmental Resource Specialist II.....	85
Environmental Resource Technician.....	100
Administrative.....	95
Engineering Intern.....	46

Update January 8, 2020



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: August 21, 2020

TO: Bob Mitchard, Public Works Director

FROM: Steve Ludwig, General Services Superintendent

SUBJECT: Wayfinding Signage Project

As you know, I have been working on compiling and wrangling the Villages new wayfinding signage plan to support the newly developed downtown area. After many iterations and discussions, please find the attached proposal for the design, management, and construction of the project.

The project includes numerous signs at numerous locations throughout the downtown area. Included in the proposal are exhibits that show the locations, structures, and signage content. While this proposal does exceed the proposed budget amount, the recommended design/build option proposed is due to the contractor's familiarity with the many projects, phases, permits, products, and specifications within the greater downtown area.

The Wayfinding Sign project was originally proposed to use existing fund balance (\$75,000) in the Development Fund under the Economic Development line-item (16260100-47710). There are ample reserves in this fund to accommodate the additional expense (\$35,000) for this project and it is recommended that the FY21 budget amount in this line-item be adjusted accordingly.

I am excited to recommend the approval of this f g u k i p / d w k f "proposal to Burke, LLC, of Rosemont, Illinois for \$109, 983.

I look forward to your response.



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

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

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

PROJECT: Wayfinding Signs

CONTRACT DATE:

GUARANTEED MAXIMUM
PRICE: \$109,983.00

SUBSTANTIAL COMPLETION DATE: TBD

ARTICLE 1 - RELATIONSHIP OF THE PARTIES

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

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

ARTICLE 2 - DEFINITIONS

2.1 Contract Documents. The Contract Documents consist of:

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

.2 This Contract;

.3 The exhibits prepared by Christopher B Burke Engineering, Ltd dated and attached hereto as Exhibit B.

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

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

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

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

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

2.5 Not Used.

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

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

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

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

ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

3.3 Schedule. The Construction Manager shall maintain in written form a schedule of the Work. The schedule shall indicate the dates for the start and completion of various stages of the construction and shall be revised as required by the conditions of the Work. The schedule may contain dates when information, decisions and approvals are required from the Owner; and both the Owner and the Construction Manager agree to use their best efforts to comply with the time requirements of the schedule.

3.4 Reports. The Construction Manager shall provide monthly written reports to the Owner on the progress of the Work which shall include the current status of the Work in

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

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

3.6 Permits. The Construction Manager shall secure all permits, with data and signatures as required by the Owner, necessary for construction of the Project.

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

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

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

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

Construction Manager shall not be liable for existing infrastructure deficiencies on private property. It is understood by the Owner that unforeseen upgrades to existing infrastructure will be required to construct the improvements and that the Construction Manager will be paid for these upgrades either at the unit prices in the contract or on a time and materials

basis. The Owner and Construction Manager will work jointly to identify, coordinate and obtain permission for all work on private property. The Owner, with input from the construction Manager, will have the final say on what is an existing condition and what occurs as a result of the Construction Manager's actions.

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

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

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

3.11 Completion. At or promptly after the date of Substantial Completion, the Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the Owner; collect all written warranties and equipment manuals and deliver them to the Owner; with the assistance of the Owner's maintenance personnel, direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing; provide the Owner with a set of record drawings which the Construction

Manager shall have maintained throughout the Project; and prepare and forward to the Owner a punch list of items of Work yet to be completed.

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

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

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

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

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

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

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

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- .2 That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- .3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, martial status, physical or mental handicap or unfavorable discharge from military service.
- .4 That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Construction Manager's obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- .5 That it will submit reports as required by the Owner of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Owner or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Owner's Rules and Regulations.
- .6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- .7 That it will include verbatim or by reference the provisions of this clause in every subcontract so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract,

the Construction Manager will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Owner and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Construction Manager will not utilize any subcontractor declared by the Owner to have failed to comply with this Equal Employment Opportunity provision.

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

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

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

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

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

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

3.20 Confidentiality of Information. Any documents, data, records, or other information relating to the project and all information secured by the Construction Manager from the Owner in connection with the performance of services, unless in the public domain, shall be kept confidential by the Construction Manager and shall not be made available to third parties without written consent of the Owner, unless so required by court order.

3.21 Steel Procurement. The steel products, as defined in Section 3 of the Steel Products Procurement Act (30 ILCS 565/3) used or supplied in the performance of this Contract or any subcontract shall be manufactured or produced in the United States unless the Construction Manager certifies in writing that (a) the specified products are not manufactured or produced in the United States in sufficient quantities to meet the Owner's requirements or cannot be manufactured or produced

in the United States within the necessary time in sufficient quantities to meet the Owner's requirements; or (b) obtaining the specified products, manufactured or produced in the United States would increase the cost of the Contract by more than 10%, or the application of the Steel Products Procurement Act (30 ILCS 565/1 *et seq.*) is not in the public interest.

- 3.22 Certifications. The Construction Manager shall provide Owner with a signed Contractor's Certification, dated evenly herewith, certifying that the Construction Manager is complying with and shall comply with the specific statutes and laws required in connection with a public works contract entered into by an Illinois unit of local government.

ARTICLE 4 - SUBCONTRACTS

- 4.1 General. Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors or Subsubcontractors. The Construction Manager shall be responsible for management of the Subcontractors in the performance of their Work.

- 4.2 Selection. The Construction Manager shall subcontract with Subcontractors and with suppliers of materials or equipment fabricated to a special design for the Work and, shall manage the delivery of the work to the Owner. The Owner may designate specific persons or entities from whom the Construction Manager shall subcontract. However, the Owner may not prohibit the Construction Manager from subcontracting with other qualified bidders.

.1 If the Construction Manager recommends to the Owner the acceptance of a particular subcontractor who is qualified to perform that portion of the Work and has submitted a price which conforms to the requirements of the Contract Documents without reservations or exceptions, and the Owner requires that a different price be accepted, then a Change Order shall be issued adjusting the Contract Time and the Guaranteed Maximum Price by the difference between the price of the subcontract recommended by the Construction Manager and the subcontract that the Owner has required be accepted.

.2 The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection.

- 4.3 Assignment. The Construction Manager shall provide for assignment of Subcontract Agreements in the event that the Owner terminates this Contract for cause. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties, if any.

- 4.4.1 Subcontracts. The Construction Manager shall prepare all Subcontracts and shall have full discretion to negotiate their terms, subject to the Owner's reasonable requirements or objections as to form and content. Construction Manager shall bind every subcontractor to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's portions of the Work.

- 4.5 Foreign Corporation. Foreign (non-Illinois) corporations shall procure from the Illinois Secretary of State a certificate of authority to transact business in Illinois in accordance with 805 ILCS 5/13.

ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES

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

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1 Information and Services. The Owner shall provide:
- .1 All necessary information describing the physical characteristics of the site, including survey, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
 - .2 Inspection and testing services during construction as required by the law or as mutually agreed;
 - .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
 - .4 any other information or services stated in the Contract Documents as being provided by the Owner.
- 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and

the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.

- 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.
- 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.
- 6.5 Owner's Representative. The Owner's Representative for this Project is Owner's Public Works Director who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice; provided, however, the Public Works Director shall not have authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time. Authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the Village Council. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing. Change orders must be approved in accordance with Section 33E-9 of the Illinois Criminal Code

ARTICLE 7 - CONTRACT TIME

- 7.1 Execution Date. The parties contemplate that this Contract will be fully executed on or before the August 28, 2020. A delay in the Owner's execution of this Contract which postpones the commencement of the Work may require a Change Order equitably adjusting the date of Substantial Completion.
- 7.2 Substantial Completion. The date of Substantial Completion of the Work shall be contingent upon permitting and coordination with the Harrison Street Improvements as noted in the attached Exhibit B, and as adjusted in accordance with the provisions of this Contract. Provisions have been made to allow for the sign posts to be installed at various times as permitting and project coordination.
- 7.3 Delays. If causes beyond the Construction Manager's control delay the progress of the Work, then the Contract Price and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, a delay in the Stage 3 Wet Utility work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner's preventing the Construction Manager from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather

conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event that delays to the Project are encountered for any reason, the Owner and the Construction Manager both agree to undertake reasonable steps to mitigate the effect of such delays.

7.4 Inclement Weather. The Contract Time shall not be extended due to normal inclement weather. Unless the Construction Manager can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time and using the most recent ten-year average of accumulated record mean values from climatological data compiled by the United States Department of Commerce National Oceanic and Atmospheric Administration for the locale of the project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an adverse material effect on the Contract Time, the Construction Manager shall not be entitled to an extension of the Contract Time. If the total accumulated number of calendar days lost due to inclement weather from the start of work until substantial completion exceeds the total accumulated number to be expected for the same time period from the aforesaid data and the Owner grants the Construction Manager an extension of time, the Contract Time shall be extended by the appropriate number of calendar days.

7.5 Responsibility for Completion. The Construction Manager, through its Subcontracts shall furnish such employees, materials and equipment as may be necessary to ensure the prosecution and completion of the Work in accordance with the construction schedule. If the Work is not being performed in accordance with the construction schedule and it becomes apparent from the schedule that the Work will not be completed with the Contract Time, the Construction Manager shall, as necessary to improve the progress of the Work, take some or all of the following actions, at no additional cost to the Owner:

- .1 Increase the number of workers in such crafts as necessary to regain the lost progress;
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment or any combination of the foregoing to regain the lost progress.

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

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

ARTICLE 8 - PAYMENT

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

1. The Guaranteed Maximum Price is based on the following scope of work as depicted in the Plans prepared by Christopher B. Burke Engineering, Ltd. and Engineering Enterprise, Inc., including any Addenda thereto.
2. Unit prices used for the actual work will be determined by the bidding process identified in Article 4 of this Agreement.
3. Assumptions on which the Guaranteed Maximum Price are based, are as follows:
 - .1 The site is free of rock, debris or other bad soil conditions
 - .2 Hazardous materials are not present at the site.
 - .3 Durations to acquire permits are beyond the Contractor's control.
 - .4 No utility conflicts exist.
 - .5 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. However, such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

.1 With each Application for Payment the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner to demonstrate that cash disbursements or obligations already made or incurred by the Construction Manager on account of the Work equal or exceed (1) progress payments already received by the Construction Manager less (2) that portion of those payments attributable to the Construction Manager's Fee plus (3) payrolls and other costs for the period covered by the present Application for Payment.

.2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require and shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

.3 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the

percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

.4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.4 Subtract the aggregate of previous payments made by the Owner.

.5 Except with the Owner's prior approval, payments to the Construction Manager and Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

.6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

8.4 Progress Payment Documentation and Withholding of Payments due to Subcontractor Notice Received. The Construction Manager shall supply and

each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;
- (B) duly executed waivers of mechanics' and materialmen's liens of the money due or to become due herein, establishing payment to the Subcontractor or material supplier of all such obligations to cover the full amount of the Application for Payment from each and every Subcontractor and suppliers of material or labor to release the Owner of any claim to a mechanic's lien, which they or any of them may have under the mechanic's lien laws of Illinois. Any payments made by the Owner without requiring strict compliance to the terms of this paragraph shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the terms of this approach as a condition of later payments. The Construction Manager shall indemnify and save the Owner harmless from all claims of Subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the Work;
- (C) sworn statements or lien waivers supporting the Application for Payment submitted late by the Construction Manager to the Owner will result in the Application for Payment not being processed until the following month.
- (D) Owner may, after having served written notice to the Construction Manager either pay unpaid bills, of which Owner has written notice, direct, or withhold from Construction Manager's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Construction Manager shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to the Construction Manager. In paying any unpaid bills of Construction Manager, Owner shall be deemed the agent of Construction Manager and any payment so made by Owner, shall be considered as payment made under the Contract by OWNER to Construction Manager and OWNER shall not be liable to Construction Manager for any such payment made in good faith.

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

- 8.5 Late Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et. seq.*)
- 8.6 Title. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances upon receipt of such payment by the Construction Manager.
- 8.7 Final Payment. Final Payment shall be due and payable when the Work is fully completed. Before issuance of any final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been or will be paid or otherwise satisfied. In accepting final payment, the Construction Manager waives all claims except those previously made in writing and which remain unsettled. In making final payment, the Owner waives all claims except for outstanding liens, improper workmanship or defective materials appearing within one year after the date of Substantial Completion, and terms of any special warranties required by the Contract Documents.
- .1 The amount of the final payment shall be calculated as follows:
- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.
- .2 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either make final payment as requested to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding part or all of the requested final payment.
- .3 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 8.7 and not excluded by Paragraph 8.8 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated

and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

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

.1 Labor costs.

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

.2 Subcontract costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

.3 Costs of materials and equipment incorporated in the completed construction.

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.

.4 Costs of other materials and equipment, temporary facilities and related items.

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
 - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - .3 Costs of removal of debris from the site.
 - .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
 - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .5 Miscellaneous costs.
- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
 - .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
 - .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.
 - .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
 - .5 Expenses and time incurred investigating potential changes in the Work.
 - .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract

Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.

- .7 Data processing costs related to the Work.
- .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .9 Legal, and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
- .10 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.
- .6 Other costs. Other costs incurred in the performance of the Work.
- .7 Emergencies and repairs to damaged or nonconforming work.
 - .1 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - .2 Costs incurred in repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers.
- 8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.
 - .1 The Cost of the Work shall not include professional services or the following:
 - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.
 - .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.

- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - .5 The Construction Manager's Fee.
 - .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
 - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded.
- .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

8.10 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

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

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

- .6 Failure to perform the Work in accordance with the Contract Documents.

ARTICLE 9 - CHANGES

- 9.1 Change Orders. Changes in the Work which are within the general scope of this Contract may be accomplished by Change Order without invalidating this Contract. A Change Order is a written instrument, issued after execution of this Contract signed by the Owner and Construction Manager stating their agreement upon a change and any adjustment in the Guaranteed Maximum Price and/or the date of Substantial Completion. The Construction Manager shall not be obligated to perform changed Work until the Change Order has been executed by the Owner and Construction Manager.
- 9.2 Costs. An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined by one or more of the following methods:
- .1 Unit prices as set forth in this Contract or as subsequently agreed (but if the original quantities are altered to a degree that application of previously agreed unit prices would be inequitable to either the Owner or the Construction Manager, the Unit Prices shall be equitably adjusted);
 - .2 A mutually accepted, itemized lump sum;
 - .3 Time and materials.

Construction Manager's fee shall be proportionately increased in all Change Orders that increase the Guaranteed Maximum Price, but shall not be proportionately decreased by a Change Order that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Contract Time shall be equitably adjusted.

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

shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Guaranteed Maximum Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.

ARTICLE 10 - INSURANCE AND BONDING

10.1 The Contractor's Insurance. The Construction Manager and each of its Subcontractors shall provide insurance as outlined in the attached "Insurance Requirements" document provided by the Village of Algonquin. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- .1 workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
- .2 under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Construction Manager's employees;
- .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Construction Manager;
- .4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Construction Manager or for damages to any other person;
- .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the work itself and other property insured by the Owner;
- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle;
- .7 contractual liability claims involving the Construction Manager's indemnity obligations; and
- .8 loss due to errors or omission with respect to provision of professional services under this Agreement, including engineering services.

10.2 The Construction Manager's Commercial General and Automobile Liability Insurance shall be written for not less than the following limits of liability:

Commercial General Liability Insurance

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

Medical Expenses, each person	\$ 10,000
Comprehensive Automobile Liability Insurance	
Combined Single Limit, each accident	\$1,000,000
or	
Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000
Worker's Compensation & Employer's Liability	
Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$ 500,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 500,000 each employee
Commercial Umbrella/Excess Liability	
Each Occurrence	\$5,000,000
Aggregate	\$5,000,000
Professional Liability	
Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

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

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

10.4 Primary Insurance. The Commercial General Liability and Automobile Liability Insurance policies required under this contract shall be endorsed to include, as additional insured, the OWNER, its elected and appointed officials, officers and employees, and owners of property where the Work is to be completed. Prior to the commencement of any Work, the Construction Manager shall provide the Owner with Certificates of Insurance for all insurance required pursuant to this Article. Any insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to

comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer. Construction Manager shall not allow any Subcontractor to commence or continue any part of the Work until and unless such Subcontractor provides and has in force insurance coverages equal to those required of Construction Manager by this Article, including, but not limited to, naming the OWNER as an additional insured for liability arising out of the subcontractor's work.

- 10.5 Acceptability of Insurers. The insurance carrier used by the Construction Manger shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and shall meet the minimum requirements of the State of Illinois.
- 10.6 Reserved.
- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.
- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.
- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the Construction Manager's Fee and all other professional services, and payment of the obligations arising thereunder. Bonds may be obtained through the subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the Construction Manager's Fee and all other professional services. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.

10.10 Performance and Payment Guarantee. In lieu of the Village not requiring payment and performance bonds by the Construction Manager pursuant to 30 ILCS 550/1, et. seq, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

ARTICLE 11 - TERMINATION

11.1 By the Construction Manager. Upon seven (7) days written notice to the Owner, the Construction Manager may terminate this Contract for any of the following reasons:

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

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

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

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

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

- 11.3 Termination by the Owner Without Cause. If the Owner terminates this Contract other than as set forth in Paragraph 11.2, the Owner shall pay the Construction Manager for the Cost of all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Contract. As a condition of receiving the payments provided under this Article 11, the Construction Manager shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Construction Manager's rights and benefits to the Owner, including the execution and delivery of required papers.
- 11.4 Suspension By The Owner For Convenience. The Owner for its convenience may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate. Adjustments shall be made for increases in the Guaranteed Maximum Price and/or the date of Substantial Completion caused by suspension, delay or interruption. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Contract is applied to render an equipment adjustment.

ARTICLE 12 - DISPUTE RESOLUTION

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

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

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

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

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

12.3 Continued Performance of the Work. In the event of any dispute, the Construction Manager shall continue to perform the Work and maintain its progress pending final determination of the dispute, provided the Owner places a sum equal to 150% of the amount in dispute in an escrow account, reasonably satisfactory to both parties, which specifies that the escrow agent shall distribute the escrow sum between the

parties in accordance with any agreement or court judgment entered resolving the dispute.

- 12.4 Required in Subcontracts. The Construction Manager shall include the provisions of this Article 12 in all Subcontracts into which it enters.

ARTICLE 13 – LIQUIDATED DAMAGES

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

ARTICLE 14 - MISCELLANEOUS

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.
- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, fax or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be governed by the laws of the State of Illinois.
- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 14.7 Existing Contract Documents. A list of the Plans, Specifications and Addenda in existence at the time of execution of this Contract is attached as an exhibit to this Contract.
- 14.8 Illinois Freedom of Information Act. The Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to Work performed under this Agreement are considered a public record of the Owner; and therefore, the Construction Manager shall review its records and promptly produce to the Owner

any records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Construction Manger shall produce to the Owner such records within three (3) business days of a request for such records from the owner at no additional cost to the Owner.


Owner:

Village of Algonquin
2200 Harnish Dr
Algonquin, IL 60102


Contractor:

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

By: _____ Date: _____

By:  Date: 7/29/2020
Principal

Attest: _____ Date: _____

By:  Date: 7/29/2020
Principal

Guarantee

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

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

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

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

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

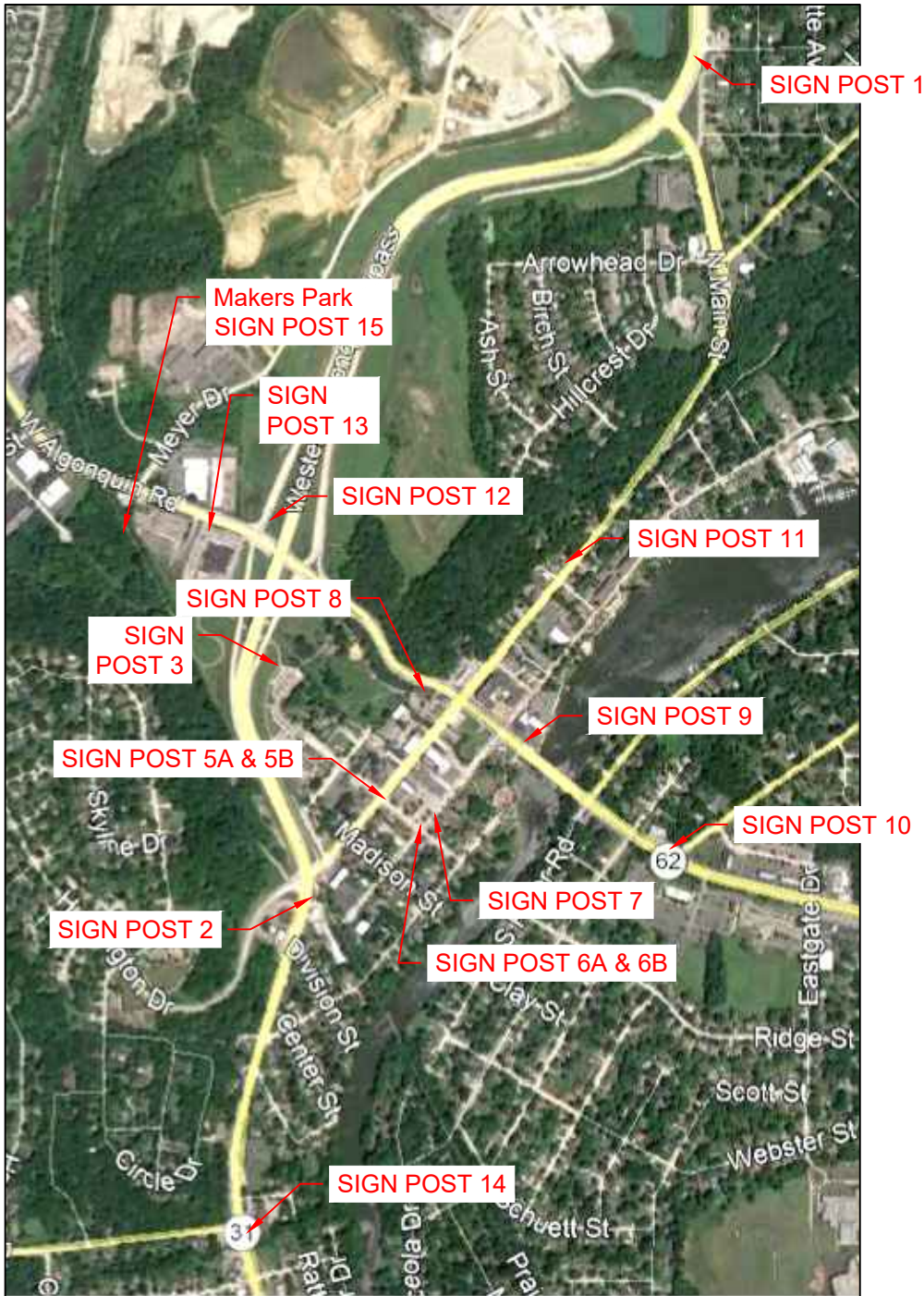


Wayfinding Sign Project
Algonquin, Illinois
Exhibit A - Summary Schedule of Values



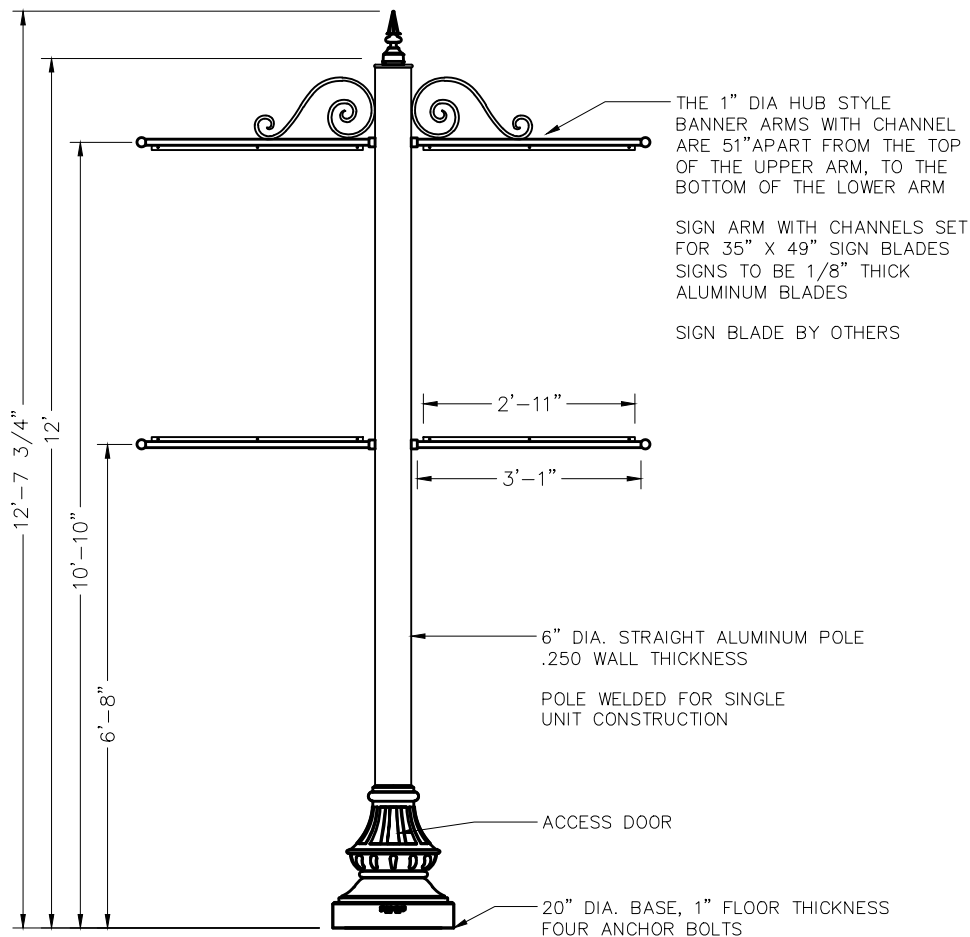
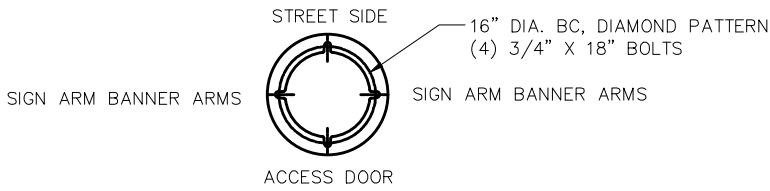
Item	Contract Value	
Professional Services	\$	21,090
Design Services	\$	9,875
Permitting	\$	4,750
Construction Management	\$	6,465
Wayfinding Sign Procurement and Installation	\$	88,893
Precast Foundations (14 ea)	\$	20,076
Sign Post, Single Sign (2 ea)	\$	6,740
Sign Post, Twin Sign (12 ea)	\$	44,650
Remove Existing Sign Post and Foundation (1 ea)	\$	560
Installation of Sign Blades (16 ea)	\$	1,216
Traffic Control & Protection (L Sum)	\$	2,110
Restoration - Topsoil, Seed and Blanket (14 ea)	\$	5,460
General Conditions (Insurance OH and Profit)	\$	8,081
Contract Price \$		109,983

GENERAL LOCATIONS



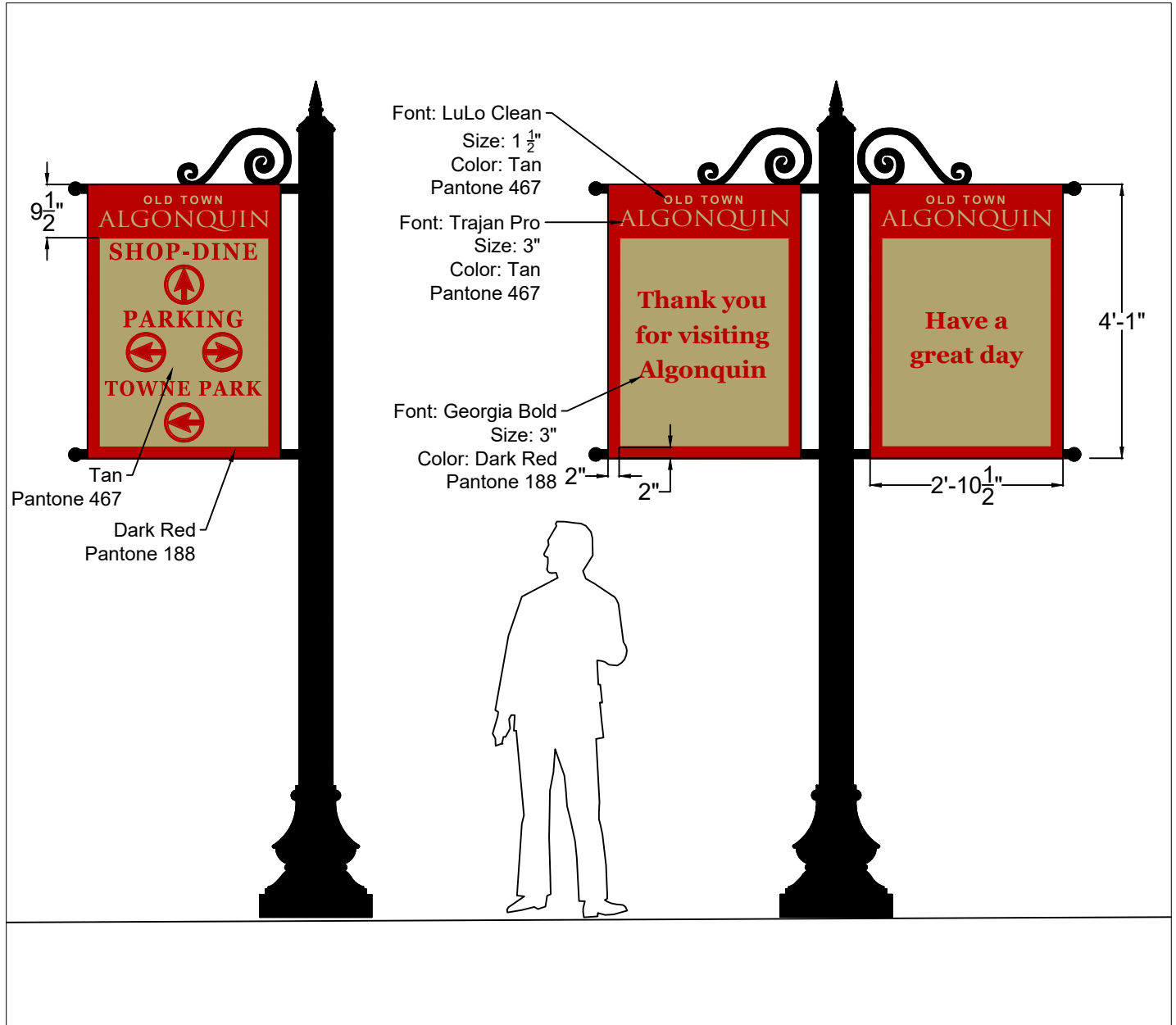
Village of Algonquin - Wayfinding Signs

#4 The interactive changeable sign board location is not shown.



DRAWN	JG
	SCALE
ALGONQUIN, IL ALGONQUIN, IL	
5212P6-.250/SSCC/Y0051-DSHBA-37"-36SCROLL(2)/STD	
DATE	5/28/20
REV	REVISIONS
A	ORIGINAL
 ESTABLISHED 1923 TEMPE, AZ	
POLE HEIGHTS HAVE A TOLERANCE OF + OR - 2"	
DRAWING NUMBER	
SC36268	

TYPICAL POST



Village of Algonquin - Wayfinding Signs

POST #1 **REQUIRES IDOT APPROVAL**

Location: Rt 31 Median Island near Elmwood Court



DOUBLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

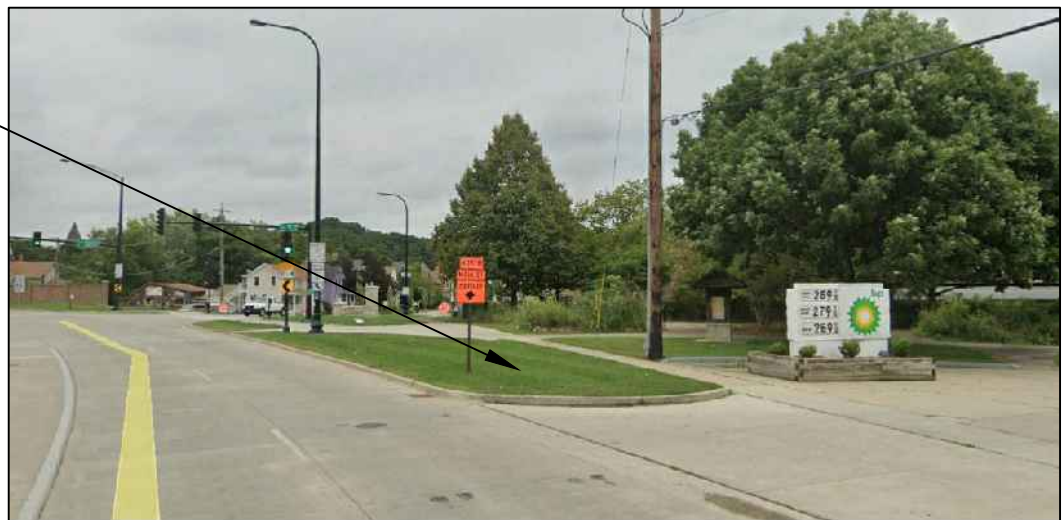
POST #2 **REQUIRES IDOT APPROVAL**

Location: Rt. 31 and Main St. (BP Gas Station ROW)



SINGLE SIDED SIGN

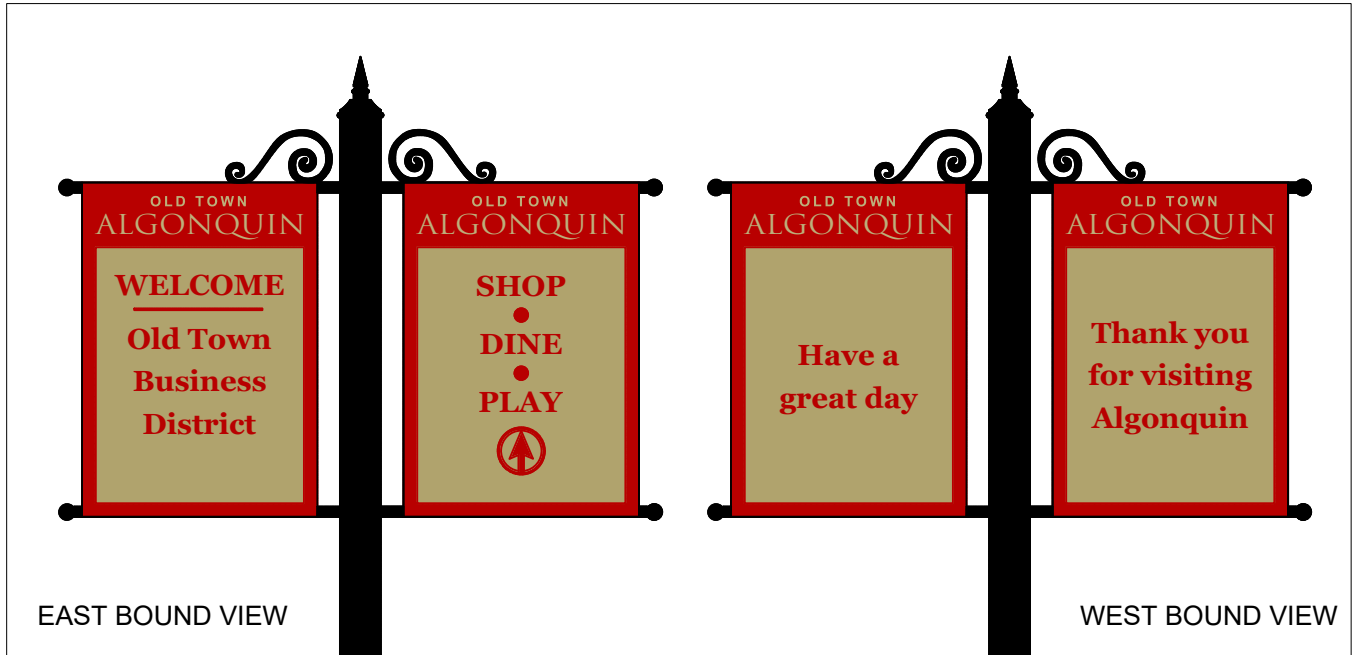
Approximate
location of
sign post



Village of Algonquin - Wayfinding Signs

POST #3

Location: Prairie Trail East Bound Approaching Towne Park



DOUBLE SIDED SIGN

Approximate location of sign post

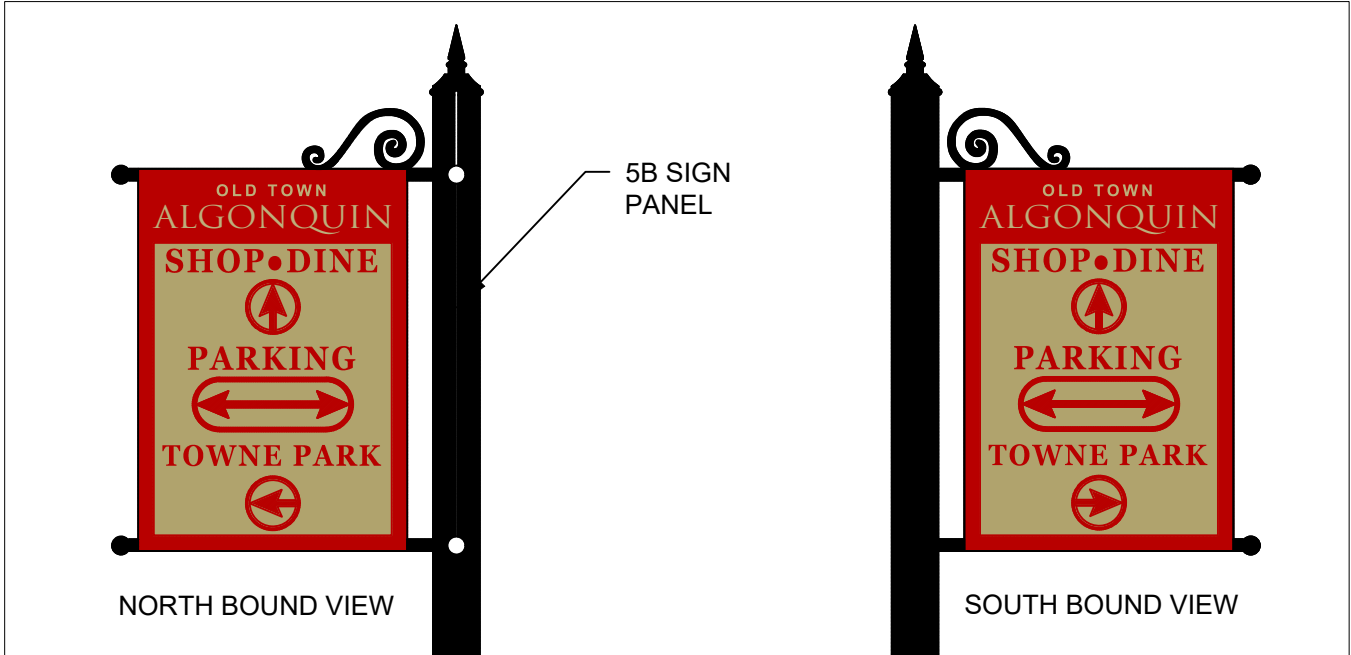


Village of Algonquin - Wayfinding Signs

POST # 5

LOCATED ON THE SAME POST AS 5B

Location: Main Street at Washington Street



DOUBLE SIDED SIGN

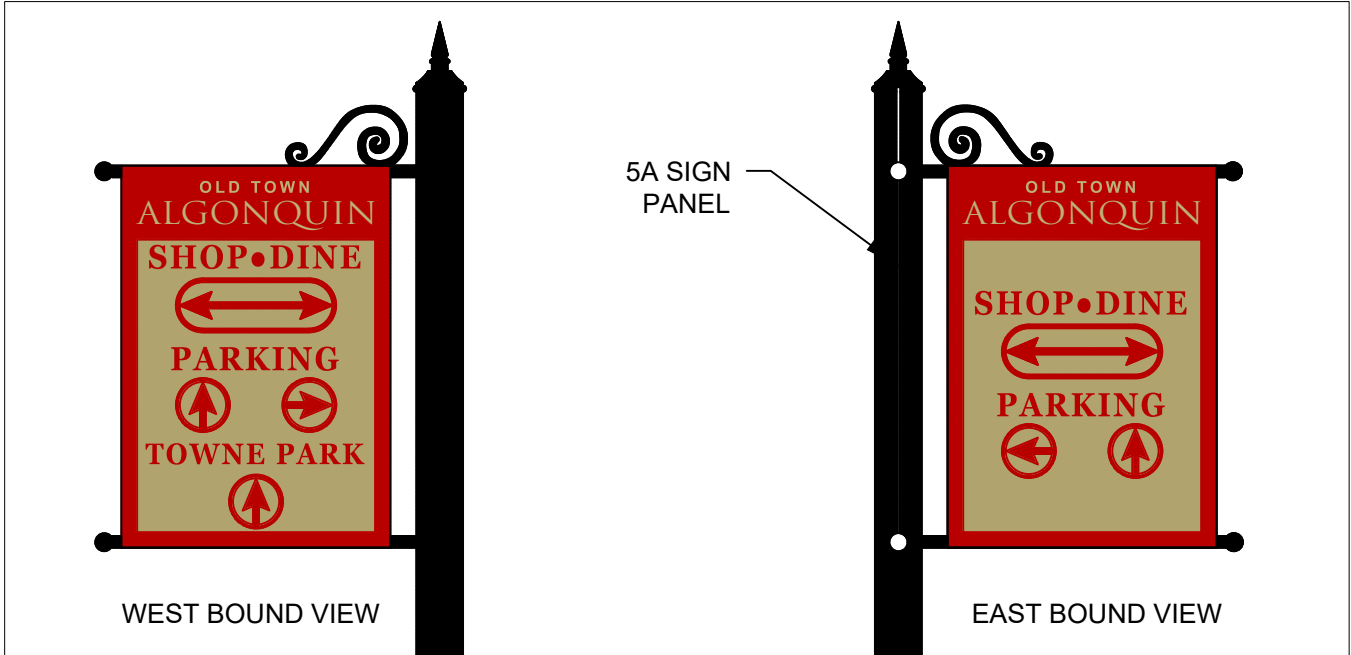


Village of Algonquin - Wayfinding Signs

POST # 5

LOCATED ON THE SAME POST AS 5A

Location: Main Street at Washington Street



DOUBLE SIDED SIGN

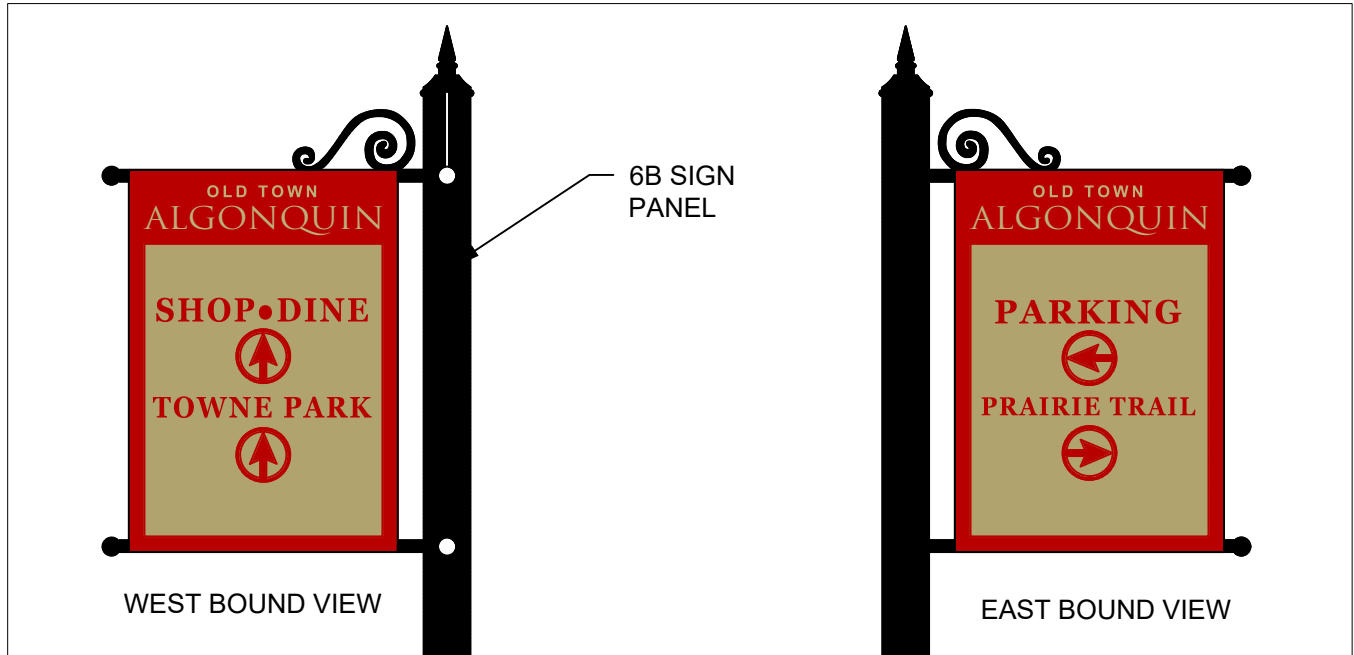


Village of Algonquin - Wayfinding Signs

POST # 6 INSTALL AS A PART OF HARRISON ST. IMPROVEMENTS

LOCATED ON THE SAME POST AS 6B

Location: Corner of Washington & Harrison Street



DOUBLE SIDED SIGN

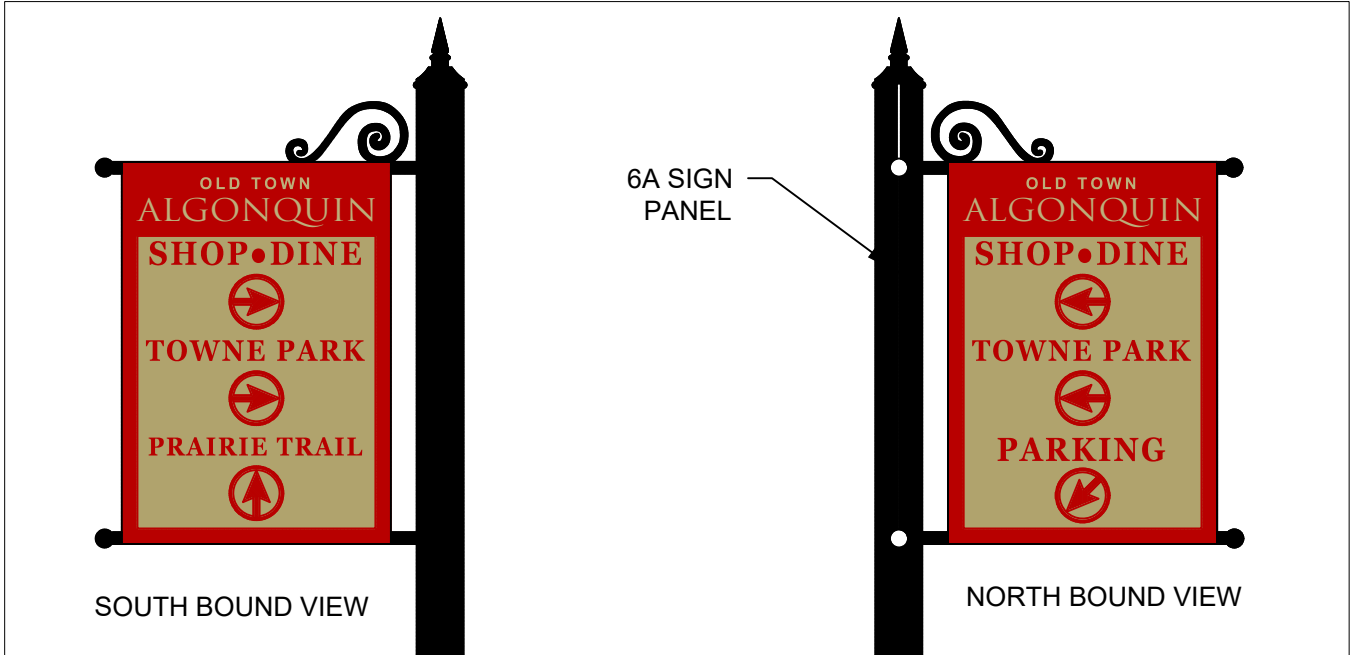


Village of Algonquin - Wayfinding Signs

POST # 6 INSTALL AS A PART OF HARRISON ST. IMPROVEMENTS

LOCATED ON THE SAME POST AS 6A

Location: Corner of Washington & Harrison Street



DOUBLE SIDED SIGN



Village of Algonquin - Wayfinding Signs

POST #7 INSTALL AS A PART OF HARRISON ST. IMPROVEMENTS

Location: Entrance Public Parking S. Harrison St.



DOUBLE SIDED SIGN

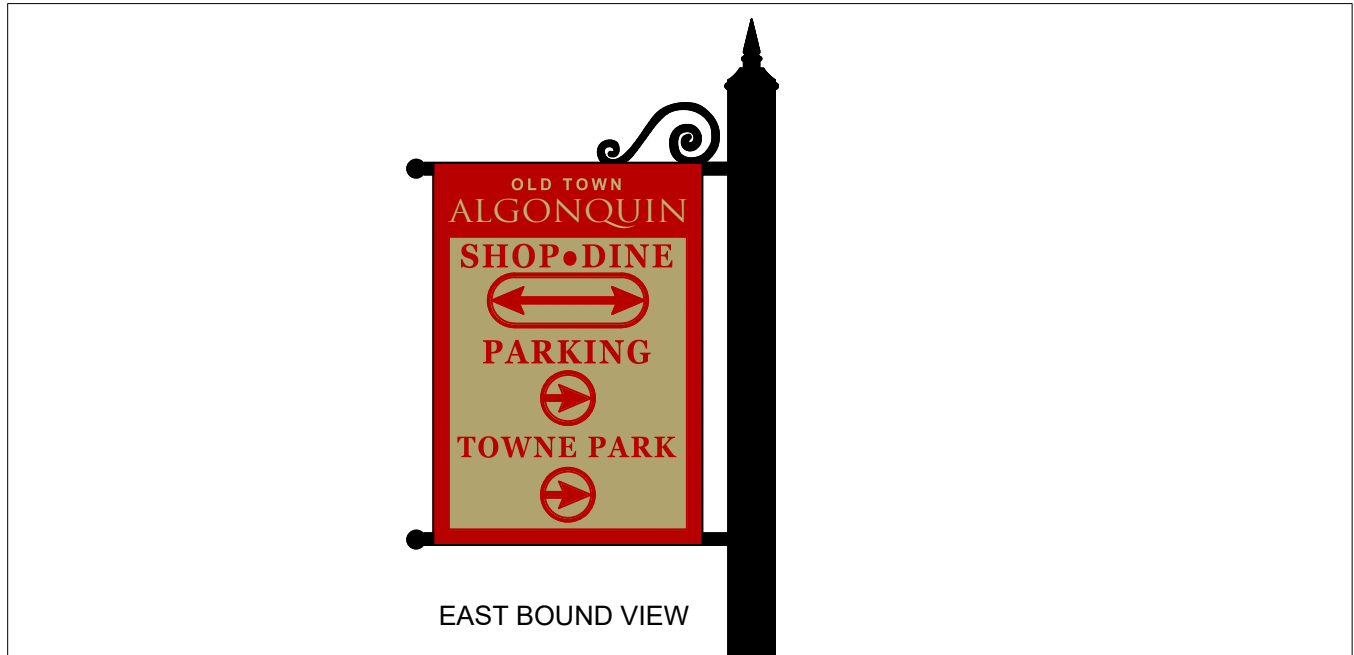
Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #8 **REQUIRES IDOT APPROVAL**

Location: E/B Rt 62 300 ft West of Main St.



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #9 **REQUIRES IDOT APPROVAL**

Location: W/B Rt 62 300 ft West of Main St.



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #10 **REQUIRES IDOT APPROVAL**

Location: W/B Rt. 62 East of N. River Rd.



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #11

Location: S/B Main St. North of 308 N. Main



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #12 **REQUIRES IDOT APPROVAL**

Location: S/B 31Ramp at 62; East Side



SINGLE SIDED SIGN

Approximate
location of
sign post



Village of Algonquin - Wayfinding Signs

POST #13 **REQUIRES IDOT APPROVAL**

Location: E/B 62 at 31, Post Office ROW



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

POST #14 **REQUIRES IDOT APPROVAL**

Location: N/B 31 at Edgewood Dr.



SINGLE SIDED SIGN

Approximate location of sign post



Village of Algonquin - Wayfinding Signs

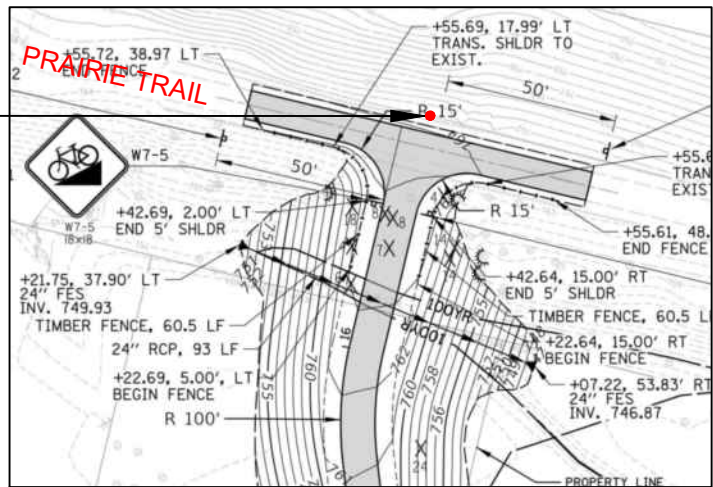
POST #15 **REQUIRES MCCD APPROVAL**

Location: At the intersection of the Prairie Trail with Makers Park Trail



DOUBLE SIDED SIGN

Approximate location of sign post. Located a minimum of 6' off the edge of trail



Village of Algonquin - Wayfinding Signs



Village of Algonquin

Police Department

-MEMORANDUM-



DATE: September 1, 2020
TO: Tim Schloneger
FROM: John Bucci, Chief of Police
SUBJECT: Ordinance Amending 43.30, Sale of Tobacco

After a thorough review of the Village of Algonquin's Municipal Code Chapters 43.23 (Smoke Free Village) and 43.30 (Sale of Tobacco), attached are ordinances recommended to assist in the regulation and enforcement of any tobacco related products.

For the Smoke Free Village ordinance (43.23), two additional definitions to Section A were added for Cannabis and Vapor Products. In addition, Section B was added to specify exemptions under the Smoke Free Illinois Act. This language is necessary to provide for any business that allowed indoor smoking that grandfathered in prior to the Act in 2008, to continue, but does not allow any additional business to participate in indoor smoking.

43.30, Sale of Tobacco will have an additional section added. Section D, Tobacco, Electronic Cigarette, Alternative Nicotine Product or Liquid Nicotine Dealer's License, will allow the village to license, on a local level, any retail establishment that wishes to sell tobacco products. This will include alternative products such as electronic cigarettes (and its components) and liquid nicotine products, as well as cannabis.

I respectfully request consideration to bring this item before the Committee of the Whole and upon review, to the Village Board for approval.

A. Smoke Free Illinois Act: The Village does hereby concur with the findings of the Illinois General Assembly in the Smoke Free Illinois Act (410 ILCS 82/1 *et seq.*), (“Act”) and adopts the Act as the Smoke Free Algonquin Act.

1. Additional definitions:

- a. Cannabis means marijuana, hashish, and other substances that are identified as including any parts of the plant *Cannabis sativa* and including derivatives or subspecies, such as indica, of all strains of cannabis, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives. Cannabis also means cannabis flower, concentrate, and cannabis-infused products.
- b. Smoke or smoking means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, cannabis, vapor products, or any other lighted smoking equipment. "Smoke" or "smoking" does not include smoking that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.
- c. Vapor product means any non-combustible product that employs a heating element, power source, electronic circuit, or other electronic chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or any other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, as well as any vapor cartridge or other container that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

B. Exemptions: Notwithstanding any other provision of the Smoke Free Algonquin Act, smoking is allowed in Any retail tobacco store that legally allowed smoking prior to the enactment of the Smoke Free Illinois Act (410 ILCS 82/1, *et seq.*)-(Source: P.A. 95-17, eff. 1-1-08.); however, smoking cannabis is strictly prohibited. Any retail tobacco store that begins operations after the enactment of the Smoke Free Illinois Act, shall not permit smoking on its premises. Any retail tobacco store that commenced operations prior to the Smoke Free Illinois Act, and did not allow smoking on its premises, shall not allow smoking on its premises.

C. Violations: A person, corporation, partnership, association or other entity who violates the Act shall be fined as follows:

1. A person who smokes in an area where smoking is prohibited under Section 15 of the Act shall be fined in an amount that is not less than \$100 and not more than \$250.
2. A person who owns operates, or otherwise controls a public place or place of employment that violates Section 15 of the Act shall be fined (i) not less

than \$250 for the first violation, (ii) not less than \$500 for the second violation within one year after the first violation, and (iii) not less than \$2,500 for each additional violation within 1 year after the first violation.

In the event such fine is not paid, the cost of collecting said fine shall be added to the fine. Collection costs shall include, but not be limited to, prosecution and attorneys' fees. Each day that a violation occurs is a separate violation.

43.30 **SALE OF TOBACCO** 96-O-29; Amended, 19-O-15, 15-O-21, 10-O-21, 96-O-58

A. Definitions: In addition to those terms defined in Appendix A of this Code, the terms used in this Section 43.30 are defined as follows:

Bidi cigarette: a product that contains tobacco that is wrapped in temburni or tendu leaf or that is wrapped in any other material identified by rules of the Illinois Department of Public Health that is similar in appearance or characteristics to the temburni or tendu leaf.

Electronic Cigarette Product: a device as defined by applicable State or Federal laws, rules or regulations, which device is capable of providing nicotine through vapor or inhalation.

Smoking herbs: all substances of plant origin and their derivatives, including but not limited to broom, calea, California poppy, damiana, hops, ginseng, lobelia, jimson weed and other members of the Datura genus, passion flower and wild lettuce, which are processed or sold primarily for use as smoking materials.

Smokeless tobacco: any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the oral cavity; any tobacco product that is suitable for dipping or chewing.

Tobacco accessories: cigarette papers, pipes, holders of smoking materials of all types, cigarette rolling machines and other items, designed primarily for the smoking or ingestion of tobacco products or of substances made illegal under any statute or of substances whose sale, gift, barter or exchange is unlawful.

Tobacco products: cigars, cigarettes, smokeless tobacco or tobacco.

B. Purchase of Tobacco and Electronic Cigarette Products Prohibited:

1. Except for remote orders outside the Village, the sale of tobacco products by remote orders and curbside pick-ups are prohibited.
2. No person under 21 years of age shall purchase any tobacco or electronic cigarette product. No person shall sell, purchase for, distribute samples of or furnish tobacco or electronic products to any person under 21 years of age. Tobacco products may be sold through a vending machine only when such tobacco products are not sold along with non-tobacco products in the vending machine and only in the following locations:
 - a. Factories, businesses, offices, private clubs and other places not open to the general public.
 - b. Places to which persons under 18 years of age are not permitted access.
 - c. Places where alcoholic beverages are sold and consumed on the premises.
 - d. Places where the vending machine is under the direct supervision (which means that the owner or employee has an unimpeded line of

sight to the vending machine) of the owner of the establishment or an employee over 21 years of age. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person.

- e. Places where the vending machine can only be operated by the owner or an employee over age 21 either directly or through a remote control device if the device is inaccessible to all customers.
3. No person under 18 years of age shall possess any tobacco or electronic cigarette product.
4. Penalty: Any person violating any provision of this Section 43.30-B shall be fined pursuant to Appendix B of this Code and be responsible for the Village's cost of prosecution, including reasonable attorney fees.

C. Tobacco Accessories and Smoking Herbs:

1. Sale to Minors Prohibited: No person shall knowingly sell, barter, exchange, deliver or give away or cause or permit or procure to be sold, bartered, exchanged, delivered or given away tobacco accessories or smoking herbs to any person under 21 years of age.
2. Sale of Bidi Cigarettes: No person shall knowingly sell, barter, exchange, deliver or give away a bidi cigarette to another person, nor shall a person cause or permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered or given away to another person.
3. Sale of Cigarette Paper: No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper or cause, permit or procure cigarette paper to be sold, offered, bartered, exchanged, delivered or given away except from premises or an establishment where other tobacco products are sold.
4. Sale of Cigarette Paper from Vending Machines: No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper or cause, permit or procure cigarette paper to be sold, offered, bartered, exchanged, delivered or given away by use of a vending or coin-operated machine or device. For purposes of this Section 43.30-C4, cigarette paper shall not include any paper that is incorporated into a product to which a tax stamp must be affixed under the Cigarette Tax Act (35 ILCS 130/1 *et seq.*) or the Cigarette Use Tax Act (35 ILCS 135/1 *et seq.*).
5. Use of Identification Cards: No person in the furtherance or facilitation of obtaining smoking accessories and smoking herbs shall display or use a false or forged identification card or transfer, alter or deface an identification card.
6. Warning to Minors: Any person, firm, partnership, company or corporation

operating a place of business where tobacco accessories and smoking herbs are sold or offered for sale shall post in a conspicuous place upon the premises a sign which there shall be imprinted the following statement: SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER 21 YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW. The sign shall be printed on a white card in red letters at least one-half inch in height.

7. Penalty:

- a. Except for Section 43.30-C2, any person who knowingly violates or shall knowingly cause the violation of any provision of this Section 43.30-C shall be guilty of a petty offense for which the offender shall be fined pursuant to Appendix B of this Code. In addition, the violator shall be responsible for the Village's cost of prosecution, including reasonable attorney fees.
- b. Any person who knowingly violates or shall knowingly cause the violation of Section 43.30-C2 shall be guilty of a Class C misdemeanor and shall be fined pursuant to 730 ILCS 5/5-4.5-65(e). The violator shall be responsible for the Village's cost of prosecution, including reasonable attorney fees.
- c. These fines are in addition to the administrative provisions for suspension, revocation or forfeiture of a license issued pursuant to Chapter 42 of this Code. Payment of such fine shall not constitute an admission of guilt or innocence for purposes of such administrative proceedings for suspension, revocation or forfeiture.

D. Tobacco, Tobacco Accessories, Electronic Cigarette, Smoking Herbs, Alternative Nicotine Product or Liquid Nicotine Dealer's License:

1. License required: It shall be unlawful to sell or offer for sale at retail, to give away or keep with the intention of selling at retail, giving away or delivering tobacco products, tobacco accessories, electronic cigarettes or their components, smoking herbs, alternative nicotine products or liquid nicotine within the Village without having first obtained a tobacco dealer's license. Such license shall be in addition to any other license required by the Algonquin Municipal Code of the Village of Algonquin. Applications for a license shall be made in writing to the Village, signed by the applicant, if an individual, or by a duly authorized agent thereof if a group or corporation, verified by oath or affidavit. Such application shall contain the name of the applicant, the address at which such sales are to be made, and in the case of cigarette vending machines, the number of machines for which licenses are to be issued and are located within the building or structure, and a statement that applicant will not violate any laws of the State, the United States or any ordinance of the Village in the conduct of his place of business.

2. License Period; Fee.: The license period shall be from January 1 to the following December 31. The annual license fee shall be \$50, payable to the Village on or before January 1 of each year.

3. Personal Nature of License: A issuance of a tobacco dealer's license is a purely personal privilege, good for the license period, unless suspended or revoked. The Village Board may deny an application if the issuance of such a license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the area in which the licensed premise is to be located. No such license shall be transferrable.

4. Suspension or Revocation: ~~The Village Board shall have the authority to~~ Violations of federal law, state statute or Village ordinance or regulation shall be sufficient cause of the revoke revocation or suspend suspension all of any licenses issued under this ordinance.

5. Responsibility for Agents and Employees: Any act of omission constituting a violation of any provision of this Section by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee and such licensee shall be punishable in the same manner as if such act or omission has been done or omitted by the licensee personally.

6. Penalty: Any person violating any provision of this Section 43.30-D shall be fined pursuant to Appendix B of this Code and be responsible for the Village's cost of prosecution, including reasonable attorney fees.

E. Accountability: All business owners of the location where a prohibited sale takes place, including individual owners and/or partners of any partnership or officers of any corporation, are accountable for their own individual violations of this Section and for the actions of their employees or agents in violation of this Section that take place while conducting business on behalf of the owner(s) and shall be subject to the penalties provided for in this Section.