

**AGENDA
CITY OF ST. CHARLES, IL
GOVERNMENT SERVICES COMMITTEE MEETING
RITA PAYLEITNER, CHAIRMAN**

**TUESDAY, MAY 29, 2018, 7:00 P.M
CITY COUNCIL CHAMBERS
2 E. MAIN STREET, ST. CHARLES, IL 60174**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. ADMINISTRATIVE**
 - a. Electric Reliability Report – Information only.
 - b. Active River Project Update – Information only.
 - c. Natural Resources Commission Minutes – Information only.
 - d. Phosphorus Removal and Digester Improvements Project Update – Information only.
- 4. POLICE DEPARTMENT**
 - a. Recommendation to Update Title 9 “Public Peace, Morals and Welfare” of the City Ordinance, to Include Modifications to Chapters 9.04, 9.05, 9.08, 9.14, 9.21, 9.24, 9.28, 9.44, 9.49, 9.50, and 9.52.
 - b. Recommendation to add Chapter 8.06 “Public-Owned Boat Launch” to Title 8 “Health and Safety” of the City Ordinance.
 - c. Recommendation to Update Title 5 “Business Licenses and Regulations” of the City Ordinance, to Include Modifications to Chapters 5.28 “Peddlers” and 5.36 “Solicitors”.
 - d. Recommendation to approve Street Closure for Baker Memorial Church Car Wash to be held on June 16, 2018.
 - e. 2018 IBB for Pitties – Information only.

5. PUBLIC WORKS DEPARTMENT

- a.** Design Development Presentation and Cost Estimate Review for the Police Station Project.
- b.** Recommendation to Waive the Formal Bid Procedure for Bid Package #2 and Bid Package #3 for the Police Station Project.
- c.** Presentation with Recommendation to Authorize Execution of a Five Year Refuse Contract with Lakeshore Recycling System.
- d.** Recommendation to approve Limited License Agreement with Syndeo for Fiber Installation within St. Charles ROW.
- e.** Recommendation to approve Franchise Agreement and Pole Attachment Agreement with Comcast.
- f.** Recommendation to approve Purchase Order to Sauber Manufacturing Company for Electric Line Pole/Cargo Combination Trailer.
- g.** Recommendation to award Purchase Order to Archon Construction for Electric Manhole Frame and Cover Adjustments.
- h.** Recommendation to approve Purchase Order to Green Planet 21 Utility for Cable Removal Contractor Services for a Two Year Period beginning May 1, 2018 through April 30, 2020.
- i.** Recommendation to approve Acceptance of Electric Easement at 315 S. Kirk Road.
- j.** Recommendation to approve Budget Addition to the Ohio Avenue Roadway Improvement Project.
- k.** Recommendation to approve Construction Contract for the Ohio Avenue Roadway Improvement Program.
- l.** Recommendation to approve a Construction Engineering Agreement for the Ohio Avenue Roadway Improvement Project.
- m.** Recommendation to approve a Construction Engineering Agreement for the Campton Hills Road Roadway Improvement Project.
- n.** Recommendation to approve Construction Contract for Pavement Rejuvenation.
- o.** Recommendation to approve Budget Addition to the 7th Avenue Creek Project.

- p. Recommendation to approve Real Estate Purchase Agreement for 1734 Riverside Avenue.
- q. Recommendation to award the Bid for Water Treatment Salt.
- r. Recommendation to award Proposal for Environmental Services SCADA Phase #1 Hardware.
- s. Recommendation to award the Proposal for Construction Engineering for 7th and Division Avenue Lift Station Replacement.

6. EXECUTIVE SESSION

- Personnel –5 ILCS 120/2(c)(1)
- Pending Litigation – 5 ILCS 120/2(c)(11)
- Probable or Imminent Litigation – 5 ILCS 120/2(c)(11)
- Property Acquisition – 5 ILCS 120/2(c)(5)
- Collective Bargaining – 5 ILCS 120/2(c)(2)
- Review of Executive Session Minutes – 5 ILCS 120/2(c)(21)

7. ADDITIONAL ITEMS FROM MAYOR, COUNCIL, STAFF OR CITIZENS

8. ADJOURNMENT

ADA Compliance

Any individual with a disability requesting a reasonable accommodation in order to participate in a public meeting should contact the ADA Coordinator, Jennifer McMahon, at least 48 hours in advance of the scheduled meeting. The ADA Coordinator can be reached in person at 2 East Main Street, St. Charles, IL, via telephone at 630 377 4446 or 800 526 0844 (TDD), or via e-mail at jmcmahon@stcharlesil.gov. Every effort will be made to allow for meeting participation. Notices of this meeting were posted consistent with the requirements of 5 ILCS 120/1 et seq. (Open Meetings Act).



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 3.a

Title: Electric Reliability Report – Information Only

Presenter: Tom Bruhl

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

For Information Only.

Attachments *(please list):*

* April 2018 Outage Report

* April 2018 Streetlight Repair Report

Recommendation/Suggested Action *(briefly explain):*

For information only.

Streetlight Repair Report

Expectation: Streetlights will be repaired within 10 days of notification

Streetlight Repair Statistics

Fiscal Year	Number of Lights Repaired	Average Days to Repair
2018	801	5.3
Month Light Was Repaired	Number of Lights Repaired	Average Days to Repair
May	45	10.5
June	22	4.0
July	166	6.1
August	63	4.4
September	41	4.3
October	54	3.7
November	115	6.5
December	39	4.1
January	89	7.0
February	50	4.7
March	67	4.4
April	50	4.2

April notes: 1 light exceeded 10 days



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 3.b

Title: Active River Project Update – Information Only

Presenter: Chris Adesso

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: \$ N/A Budgeted Amount: \$ N/A Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The Active River Task Force wishes to provide the Council Committee updates on the status of topics pertaining to the Active River Project/Concept. The Task Force offers the attached information to the Committee. A member of the Task Force will be available at each of the Government Services Committee meetings to respond to any questions or comments that the Council Committee may have.

Attachments *(please list):*

* April, 2018 – Task Force Meeting Minutes

Recommendation/Suggested Action *(briefly explain):*

None – For information only.

**MINUTES
ACTIVE RIVER TASK FORCE MEETING
ST. CHARLES
JOHN RABCHUK, CHAIRMAN
APRIL 2, 2018**

Members Present: Chair. John Rabchuk, Chris Adesso, Rick Brems, Holly Cabel, Jim Enck

Members Absent: Trish Beckjord, Monica Meyers, John Wessel

Others Present: Tom Anderson, Isabel Soderlind, Ed Werneke, Tony Zehnder,

1. Call Meeting to Order

The meeting was convened by John Rabchuk at 8:01 a.m.

2. Minutes Review and Approval

Motion was made to accept and place on file the minutes of the March 5, 2018 Active River Task Force meeting.

Motion by Tony Zehnder second by Tom Anderson, to accept and place the minutes on file.

Voice vote: Ayes: unanimous; Nays – None Absent: T. Beckjord, M. Meyers, J. Wessel

Motion carried at 8:02 a.m.

3. Active River Project Funding Issues and Discussions

A. 2018 City of St. Charles Budget Proposal

The City's fiscal year budget for 2018/2019 is being reviewed at a public hearing held at 6:45 p.m. tonight. As of last week there was still \$400,000 budgeted for Phase I Design Engineering and another \$300,000 budgeted for each of the next two fiscal years, FY2019/2020 and FY2020/2021 for the Active River Project.

The Park District Board is still in discussion with the City in regards to an intergovernmental agreement; the City appears to be open to some ideas but items are still being discussed.

B. Private Developer's Interest

i. Meeting with Jerry Ferstman, formerly with Forest City Development

Mayor Rogina, St. Charles Park Board President Bob Carne, Holly Cabel and Mark Koenen met with Jerry Ferstman last week. Mr. Ferstman managed the conceptualization and development of The Promenade Shopping Center in

Bolingbrook and the surrounding area, which includes IKEA, Bass Pro Shop, hotel and movie theater. He also led the development of the condo buildings at the south end of Grant Park (adjacent to Soldier Field) in Chicago.

The discussion included the following highlights:

- Mr. Ferstman mentioned the Promenade project began by identifying specific parcels. They then went to the city and proposed a directed tax proposal, a combination of sales tax and accommodations tax. These revenue sources were dedicated specifically to this project and went straight to the bonds. The bonds then paid off for the infrastructure of the project, related highways and utilities.
- These were non-recourse bonds. There was no obligation on the city's part to pay off the bonds and it would not impact the city's bonding capability.
- John Rabchuk and Mr. Ferstman drove around town and looked at several parcels around the downtown area. Jerry was very impressed and thought this project would be a good fit for St. Charles. Mr. Ferstman will be a good contact for a list of resources and developers that may be interested.
- The group discussion focused on the development of the downtown area. The Active River Project would instead become a component of the downtown development, i.e., a full integrated development project similar to the Greenville, South Carolina and the Columbus, Georgia project.
- If it elected to follow this type of scenario, the City would need to commit to building the infrastructure of the Active River Project along with the infrastructure requirements (electric, sewer, water, roadways, etc.), which would be paid by the dedicated bonds. This could be a dedicated SSA District, sales tax, food & beverage tax, restaurant and accommodation tax, etc. Most of these taxes would come from visitors and not necessarily from local residents.
- The discussion focused on how to entice and obtain private developer financing for a downtown development with the river becoming the attraction for development.
- Mr. Ferstman mentioned studies and projections are essential to promote the project. Once the project is up and running, marketing and advertising promotions would also be important.
- Mr. Ferstman recommended a group of influential people assess and determine the best use of the sites currently available i.e., retail, restaurant, multi-family, etc.
- Mark Koenen, Mayor Rogina, Holly Cabel and Bob Carne, President of the St. Charles Park District Board, will determine next steps.

C. Discussions with Consultants

- i. Contacts have been passed on to Mark Koenen

Holly Cabel has passed several contacts to Mark Koenen. Rick Brems supplied the Columbus, Georgia contact, and Rick Hitchcock provided an additional contact in Louisville, Kentucky. The contact at Louisville, Kentucky has worked with Kathy Blaha on other projects.

Mark and Holly will be contacting the various connections.

- ii. Other Referrals from Hitchcock

John Rabchuk mentioned that Rick Hitchcock, from the Hitchcock Design Group, has been sending him some additional contacts and he has been passing these on to Mark Koenen and Holly Cabel. Hitchcock is working on a river projects for Columbus, Indiana; Kankakee, Illinois; and Louisville, Kentucky.

D. Update on Inter-Governmental Agreement between City and Park District

Holly Cabel mentioned these meetings are ongoing almost on a weekly or every other week basis. The Park District board is determining what they would like to do from a budgetary standpoint this year and next steps moving forward.

4. Marketing, Publicity and Community Outreach

A. Update and Presentations of New River Corridor and Active River Websites

- i. City utilized new Active River video in their meetings with local federal representatives

John Rabchuk mentioned the new Active River Project video was presented to local federal representatives while Mark Koenen was attending the American Public Power Association (APPA) Conference in Washington DC the end of February.

- ii. How to use Heart of the Fox to promote and educate the Active River Project to the community

(See Section 5C – River Corridor Foundation.)

B. Downtown St. Charles Partnership, Chamber of Commerce, STC Convention and Visitors Bureau

Jim Di Ciaula is the new Chamber of Commerce President. He is trying to organize the Chamber and local non-for-profit groups to work closely together.

River Corridor Cruise Night will be held on April 26. Jim has taken a much more aggressive approach to inform local businesses about the Active River Project.

C. Scheduled Presentations

- i. Batavia Mayor Schielke and Communications Director Christopher Cudworth have asked for an update on Active River Project

A date for this presentation has not been scheduled yet.

Per John Rabchuk, Kevin Burns, Geneva's mayor, is also interested in setting up an Active River group in Geneva.

- ii. St. Charles Golden K Club

This meeting is scheduled for Thursday, May 17th at St. John Neumann Church from 9:30 – 10:30 a.m.

There will be an Active River Project presentation for 100 members of the Golden K Club. John Rabchuk will update the current Active River Project presentation.

5. Member Organization Updates

A. St. Charles Park District

- i. Pottawatomie Golf Course Shoreline Restoration and Stabilization Effort Phase I will begin this Fall

The Golf Shoreline Restoration and Stabilization Project was presented to the St. Charles Park District Board. The project will be addressed in phases over the next 3+ years and have been prioritized as it relates to the erosion. Hole 4, which runs along the river, will be the first phase to be addressed this coming fall. This project will last three to four years. Each year they will take a different phase and each will need to be approved by the Park District Board when the time comes.

- ii. Boy Scout Island Boat Launch Project

Boy Scout Island will be shut down the end of this month to work on the ramp. The work on the parking lot will start in the fall.

The Ferson Creek park rowing racks are being filled mostly by individuals, and the level of rowing activity remains very strong. A St. Charles resident has qualified for the U.S. Olympic Rowing team.

- iii. Delnor Woods Dam Project

The replacement/renovation of the Delnor Woods Dam project has been in the works for a couple of years. The project was in the budget last year, but the bid proposals came in over budget. The budget was increased and the project was rebid this past winter. The project was approved approximately three weeks ago and the work has begun.

B. City of St. Charles

- i. Replacement for Piano Factory / Indiana Pedestrian Bridge

The announcement of the ITEP Grant for the Indiana Pedestrian Bridge will not occur until late spring or sometime this summer. There is the potential that the bridge may be closed if the City does not receive the grant.

The committee discussed the impacts on the downtown in regards to connectivity if the bridge is closed.

Tom Anderson felt this committee should try to keep this bridge open and be placed on this agenda in the future.

ii. 7th Avenue Creek Project

Some of the properties along 7th Ave Creek are currently being demolished. For now, the properties will be graded and seeded. The only monies budgeted for this project next fiscal year is for the 7th Ave Culvert Replacement/Lining.

Chris Adesso was not aware of any other Active River City related projects budgeted for the upcoming year.

C. River Corridor Foundation

i. Heart of the Fox – 5K & 10K runs; Colonial Café Color Run with FVSRA and WDRA inclusion and Tug of War across the river on Sunday, May 20, 2018

Rick will set up an Active River a booth with video at the First Street Plaza. A 55” TV will be running the Active River Project video. Tony Zehnder will set up the booth while Rick Brems works the Color Run in the morning.

Rick has purchased a six foot folding table to hold the brochures, etc. but he also suggested purchasing an Active River Project banner for the front of the table. The Committee recommended the banner should say “Active River”; it will be generic enough for other future functions.

John Rabchuk mentioned he has officially heard from only one team for the Tug-of-War, St. Charles Fire Local 3322. He has heard that several other organizations are organizing teams, but he has not officially received any other applications.

John Rabchuk distributed Heart of the Fox posters to local businesses this past weekend. Some of the businesses have been aware of the Active River Project but at this point they are not aware of any details. Overall, many of the business appeared were very receptive regarding the project.

ii. Gratitude Project Sculpture

The installation and dedication of the Gratitude Sculpture is supposed to be completed by mid-May. The sculpture will be located near the Indiana Pedestrian Bridge. It still needs to be painted and then shipped. The electric conduit has been installed at the base, with the rest of the electrical work completed when the sculpture arrives.

iii. Boy Scout Island Lagoon Nature Preserve

Trish Beckjord has been encouraging the Fox River Eco System Partners (FREPP) to consider a design of converting the lagoon to a nature preserve and water native foliage display.

Per John Rabchuk, there has been some preliminary discussions between Trish Beckjord and FREPP regarding the Boy Scout Lagoon. If FREPP is truly interested, Holly would encourage FREPP to make a presentation to the Park District Board.

iv. Kiwanis Signature Project – Commitment to Active River

Kiwanis put out a press release this week regarding their Signature Project. Kiwanis hopes to encourage other civic groups and private individuals to contribute pieces to the project. It will be posted on Facebook this week.

6. New Business: None

7. Other: None

8. Adjournment

The next meeting is scheduled for May 7, 2018, at 8:00 a.m. at the Baker Community Center.

Motion was made by Tony Zehnder, 2nd by Rick Brems to adjourn the meeting

Voice vote: Ayes: unanimous; Nays – None Absent: T. Beckjord, M. Meyers, J. Wessel

Meeting was adjourned at 9:09 a.m.



ACTIVE RIVER PROJECT MEMORANDUM



TO: ACTIVE RIVER TASK FORCE

FROM: JOHN RABCHUK

SUBJECT: ACTIVE RIVER DEVELOPMENT - POSSIBLE FINANCING OPTION

DATE: MARCH 27, 2018

CC:

Question: Do we desire to build Active River because it will help revitalize the city of STC (especially downtown), or do we revitalize downtown STC by utilizing Active River?

In meeting with a representative of a very large development firm earlier this week he asked why we were concerned about what features and functions might be included in Active River. He said that in a sense it didn't matter at this stage what features might be included or excluded, as the focus needed to be on what a fully developed downtown STC might look like. That being said, he said that the concept plan that we have developed and the marketing that we have been doing is a huge plus for the scenario described below.

From his perspective he said we have been taking steps out of sequence and worried about details that can be dealt with later – once the project is defined and if/when a decision is made to move forward.

First, identify in detail all potential development parcels within the downtown area (police station site, Harris Bank block, Cordon Blue block, Creamery Building block, remaining parcels in First Street Development, the area north of Cedar Street and west of Rt. 31, Allied Plastics site, the UP railway right of way, the parking areas along the west bank of the river and north of Carroll Tower, etc.). This includes identification of any potential issues with each parcel (IE: water wells, potential hazardous waste remediation required, use restrictions in deeds, etc.) as well as exact dimensions, current zoning, views to river, current structures and conditions on surrounding parcels, etc.

Second, solicit counsel from a select group of people that can provide advice and guidance what would be best on each of those parcels: IE, multi-family residential with first floor retail/restaurant and maximize views of river. This committee will become key stakeholders as the project moves along and will coalesce community support. You invite their advice because they are proven, smart leaders that have the best interests of the City in their heart and are highly influential within the community.

Once you have identified what could/should be on each parcel, hire a design consultant that can sketch out some ideas that conform to the plan based upon the desired goals for each parcel and the overall vision for downtown. This is not a full-blown design, but enough that would provide a potential developer with a clear view of what the community desires at each site (IE: five story mixed use, owner occupied condos in the 1500-2500 sq. ft range with maximized river views and 'X' sq. ft of retail or office on first and second floors with 'X' number of parking spaces.

With that design you can also use that consultant to provide some broad cost parameters of the structures, which will help to determine the economic feasibility for a developer. Separately, you can also estimate the costs for infrastructure improvements (water, sewer, streets, electric, traffic control, storm water management, lighting, etc.) that will be required to support the entire scope of development including the Active River component (the complete ARP project from one end of the city to the other including the UP right of way).

Conduct an economic/demographic study to see if the numbers and market will support the stated goals of residential, retail and office mix proposed for the total parcels. The study will help to define the mix of development product that our market might support. For example, we know that there is a market for our aging population that wants to stay in St. Charles because of friends and family yet downsize or reduce maintenance responsibilities. What is the size of that demographic, what is their median income, what types of options will they consider, etc.

Next, hire a bonding specialist who will look at all of the potential revenue streams from the total development of all of the parcels and from the city in general. This could include sales tax, property tax, accommodation tax, entertainment tax, cash donation requirements (for the park district for example) for each parcel as developed, etc. This specialist will then be able to calculate the bonding capacity that should be available to support the project. By that it means the amount of bonds required needed to cover the total cost of infrastructure (including soft costs and Active River), but not the cost of acquiring the land or building out any of the parcels. These municipal bonds would be supported by the defined revenue sources per this study. They will be non-recourse, so this will not be STC city debt - it is debt supported by the defined revenue sources only. For example, a 0.5% increase in the sales tax from all of the businesses (retail, hotel, office, etc.) and structures in the Bolingbrook Promenade shopping area (including Bass Pro, IKEA, a Hampton Inn, and out lots) supported the \$80M in bonds necessary for the city to construct all of the highways, parking, sewers, electric, traffic control, water, etc. for that development. Bolingbrook was not liable for those bonds. The bond holders accepted the dedicated revenue streams as their only collateral. Similarly, Greenville elected to place an additional 2% sales tax on food, beverage and accommodations. This new revenue source was solely dedicated to paying off the bonds that paid for the infrastructure costs for downtown Greenville and Falls Park. Actual receipts far exceeded the projections in the forecast for what this sales tax would produce and they paid off those bonds much earlier than scheduled. Now, that 2% sales tax is a major new source of revenue for the city allowing them to potentially reduce or replace other taxes as well as to pay for the operations and maintenance of the downtown and falls Park areas. Greenville is also looking at a significant expansion to Falls Park which would be paid for from this same dedicated revenue source. Greenville correctly assumed that the largest portion of this new sales tax would actually be paid by visitors so the impact on residents and local businesses was softened.

We also start a whisper campaign with a select group of developers (creating a competition – these will probably not be local) that there is a city in the western suburbs that has identified X acres of prime downtown parcels for redevelopment and has designed an extraordinary riverfront attraction that will place it far ahead of all other suburbs as a desirable place to live, shop, visit, etc. and it will attract X amount of tourists each year as a unique regional center (all supported by the earlier economic and demographic study). The goal is to get someone on the inside of 3-4 developers that buys into the overall concept and wants to 'own' the project. You need an 'inside project owner' to get past all of the hurdles that will always arise. So now, Active River (along with the demographic and economic story) becomes the carrot for the developer that is looking at all of the parcels together as one large development. For example: the Cordon Blue parcel hasn't sold in three years and has drawn little interest as a small parcel; but as a component of a larger plan with the Active River, realigned streets to maximize river access and views, etc. is suddenly much more attractive.

In this scenario, our total cost is for the parcel design study, the economic/demographic study the bond analysis study and developing a full-blown marketing effort to help sell the project and then to sell STC as the development progresses (I am guessing here, but probably less than \$1.0M total). All of the hard and soft infrastructure costs (including Active River design, engineering and construction) are paid for by the bonds without recourse to the City. The developer will pay for the land, all of the soft costs for each parcel including legal and design, the structures themselves, marketing the properties, etc. There is no need for federal, state or other grants (which are very hard to find these days anyway – although where available they can reduce the overall bonding required) and the Active River Project gets built out much faster than might otherwise happen. The final design will be subject to some degree to what the developer feels needs to be included as the carrot for their project to work, but the City and Park District will have the final say. In a simplistic view, we will have to front most of the money for the consultants and studies; but a mechanism for funding the long-term operation and maintenance of Active River and other infrastructure needs to be identified and codified as a key component of the overall scheme. Philanthropic and grant sources can be utilized to fill out Active River components, enhance environmental goals, etc.

And, once the bonds are paid off, the dedicated revenue sources can remain in place to supplement (or replace/reduce) existing taxes and to support an on-going marketing campaign for the City (like Greenville has done - they now are running a +\$4.0M surplus in their budget because those revenue sources have paid off the bonds, but now direct \$ to the City coffers). Early and continual marketing will be essential to fulfilling the expectations of the overall plan, and the developer will probably require some level of commitment for this.

At first glance it sounds too good to be true, and it is. This outline suggests a much larger development with far more pieces and a complexity that will lead to many issues. The size of the project will bring out all of those that complain of traffic, that only want single family housing, that never want change, that insist on smaller building sizes, that don't want tourists, that don't understand how this won't cost them tax dollars, etc. This will obviously involve a fair number of property owners which will also complicate issues. A long-term, well-managed marketing and public relations campaign (highlighting successes in other communities, etc.) will be necessary to control the message and build broad based community support once the project direction and scope are announced.

But if successful, we end up with a redeveloped downtown St. Charles and the Active River project completed as a side benefit. This scenario suggests that for a relatively small upfront cost a major redevelopment of downtown may be attainable and there is a possibility of creating new revenue sources for local governmental bodies that might be utilized to reduce/replace our current tax structure in the future.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 3.c

Title: Natural Resources Commission Minutes – Information only

Presenter: AJ Reineking

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$ N/A

Budgeted Amount: \$ N/A

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

A duty of the Natural Resources Commission is to advise and consult with the Government Services Committee. The April 12, 2018 Natural Resources Commission meeting minutes are attached.

Attachments *(please list):*

* Natural Resources Commission Minutes – April 2018 meeting minutes.

Recommendation/Suggested Action *(briefly explain):*

For information only.

**MINUTES
CITY OF ST. CHARLES
NATURAL RESOURCES COMMISSION MEETING
RALPH GRATHOFF, CHAIRMAN
APRIL 12, 2018**

Members Present: Chair. Ralph Grathoff, Valerie Blaine, Jon Duerr, Raymond Hauser, Suzi Myers, Pam Otto, Caroline Wilfong, Ron Ziegler

Members Absent: Kathy Brens

Others Present: Chris Adesso, Jeremy Craft, Marcelline D'Argento

Visitors Present: Frank Esposito, Lee Haggas, Loren Nagy, Dave Thayer, Patty Thayer, John Thornhill, Cathleen Tracy

1. Call to Order & Pledge of Allegiance

The meeting was convened by Chair. Grathoff at 7:00 p.m.

2. Introduction of Visitors, Comments and Concerns

The above-referenced visitors introduced themselves to all present. Mr. Haggas and Mr. Nagy will be instated as Commissioners of the Natural Resources Commission [NRC]. Mr. Esposito and Mr. Thornhill were in attendance as representatives of America in Bloom [AIB]. Mr. and Mrs. Thayer, and Ms. Tracy were in attendance to discuss the City's 7th Avenue Creek project.

3. Minutes Review and Approval

Motion to approve and place into the public record the minutes of the March 8, 2018 Natural Resources Commission meeting. Motion by Comm. Myers, second by Comm. Otto to approve the minutes. Voice vote: unanimous; nays – none. Motion carried at 7:02 p.m.

**4. Arbor Day
Commissioners**

The Commissioners discussed the Arbor Day Stewardship Award, and selected Chris Scott as the recipient. Motion by Comm. Duerr to present the Arbor Day Stewardship Award to Chris Scott, second by Comm. Myers. Voice vote: unanimous; nays – none. Motion carried at 7:05 p.m.

Comm. Otto confirmed the students of Wild Rose Elementary School Woods Club will make a presentation and bring a display of artwork for the Arbor Day celebration. However, there is no school for District 303 on Friday, April 27, 2018; therefore, the tree planting at Wild Rose School may need to be moved to Thursday, April 26th. Comm. Otto will contact the Woods Club teacher to discuss changing the planting date.

America in Bloom

Mr. Esposito and Mr. Thornhill confirmed AIB's participation in the Arbor Day celebration which will include seed distribution and tree care information. Promoting AIB and raising community awareness about AIB's activities during Arbor Day are key. The focus of both the NRC and AIB are compatible, and AIB would like to start a partnership with the NRC. Mr. Adesso noted that Marcia Koenen will be AIB's volunteer coordinator. In addition to the NRC's tree raffle at the Arbor Day event, AIB would like to raffle a jumbo red geranium plant [donated by Ball Seed Company]. The Commissioners agreed to have AIB participate in the raffle, and Ms. D'Argento will add this information to the Arbor Day program.

Staff

Ms. D'Argento inquired if any of the Commissioners would like to accept the Arbor Day Proclamation from Mayor Rogina at the City Council meeting on Monday, April 16, 2018 at 7:00 p.m. Chair. Grathoff will attend the meeting and accept the Proclamation from the Mayor. Other members of the NRC also expressed interest in attending the City Council meeting.

Mr. Craft confirmed with Comm. Otto that two sites have been selected at Wild Rose School for Arbor Day tree planting.

5. Old Business

None.

6. New Business

A. Poor Pruning Practices in St. Charles

Chair. Grathoff reported poor pruning practices had been observed on private commercial property located at East Main Street and Tyler Road. Mr. Craft inspected the trees and confirmed that no City trees had been pruned. Comm. Duerr commented the trees were likely trimmed to increase retail visibility, and asked what the City's standards are for trees on commercial property. Mr. Nagy explained that other municipalities such as Libertyville have strict standards for maintaining tree cover within the city, parkway trees cannot be pruned by non-City workers and all trees removed must be replaced in kind, for example. Comm. Myers recalled that previously the City did not endeavor to establish the regulation of trees on private property. Mr. Adesso noted there are building/zoning ordinances already in place regarding minimum tree counts and tree preservation on private property; the Commissioners may review this information in the City Code. Chair. Grathoff asked if the City would send a letter to the commercial business owner regarding the poor pruning. Mr. Adesso explained the City's Building and Code Enforcement Department, not Public Works, would issue that type of letter.

B. Location/Day of NRC Monthly Meetings

Mr. Adesso asked the Commissioners to consider changing the NRC's monthly meeting location and/or the day of the monthly meetings in order to accommodate the additional members of the NRC and visitors. The NRC could continue to meet on the second Thursday of the month at the Public Works facility [1405 South 7th Avenue], or change the day of the monthly meetings based on when a larger room at the Municipal Center would be available. Comm. Otto noted Park District facilities are also available for NRC meetings. The Commissioners will consider this information and make a decision at the next NRC meeting in May.

C. NRC Logo

The new NRC logo was well received by the Commissioners. The logo is displayed on the City's website, in the Arbor Day window in the atrium at the Municipal Center and it will be included in the Arbor Day program.

D. NRC Topics

Mr. Adesso communicated some suggested topics for the NRC on behalf of [appointee] Comm. Heather Goudreau: river clean-up, backyard compost bin sale, bike path clean-up, pumpkin recycling, walk/bike to work/school event, Christmas lights recycling and earth hour. Comm. Otto suggested pumpkin bowling down the hill at Pottawatomie Park as part of a pumpkin recycling event.

Mr. Adesso explained that while City staff supports and facilitates the activities of the NRC, the topics of interest and activities of the NRC will be determined by the NRC

Commissioners. Mr. Adesso noted the activities of the NRC are complimentary to some city projects including stormwater management and LED lighting, as well as the River Corridor Plan.

Comm. Zielger noted the City's *Boards and Commissions Manual* contains helpful information for new and current NRC Commissioners, including "Tips for New Commissioners." Ms. D'Argento will email a link to the manual to the new and current NRC Commissioners.

E. Dark Sky Presentation

Comm. Blaine will present information at the next NRC meeting in May.

7. Committee Reports

A. Education Committee

None.

B. Langum Woods Clean-Up

Comm. Otto reported approximately twenty students from Elgin Community College will participate in clean-up efforts on Wednesday, April 25, 2018.

8. Communications – Approval of Public Services Division Tree Activity Reports for January and February 2018

Motion by Comm. Otto to approve the above-referenced reports and place into the public record, second by Comm. Blaine. Voice vote: unanimous; nays – none. Motion carried at 8:00 p.m.

9. Additional Items

A. Commissioners

Comm. Myers commented on the NRC's invitation to the upcoming open house at the City's Electric Utility solar plant. Several Commissioners are interested in attending.

B. City Staff

Mr. Craft reported 115 trees will be planted this spring. However, planting has been delayed due to the weather.

C. Visitors

The above-referenced visitors requested information regarding the City's 7th Avenue Creek project including restoration, plans for green space and the possibility of residents volunteering with restoration and planting native prairie plants. Mr. Adesso responded the City is demolishing several houses in the 7th Avenue Creek floodplain, and when demolition is completed the area will be restored. The City selected from three different concepts for restoration and selected a naturalized concept. Mr. Adesso informed the visitors the contact for the project is Karen Young, the Assistant Director of Public Works-Engineering. The City's website also contains detailed information on the project as well as information on green infrastructure and native plants. The visitors will contact Ms. Young for additional information.

10. Adjournment

Motion by Comm. Ziegler to adjourn the meeting, second by Comm. Hauser. Voice vote: unanimous; nays – none. Motion carried at 8:14 p.m.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 3.d

Title:

Phosphorus Removal and Digester Improvements Project
Update – Information only

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: n/a

Budgeted Amount: n/a

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Information only report on the Phosphorus Removal and Digester Improvements Project. The intent is to provide the Council Committee an update on the project status.

A member of the Public Works Staff will be available at each of the Government Services Committee meetings to respond to any questions or comments that the Council Committee may have.

Attachments *(please list):*

* Information only project report

Recommendation/Suggested Action *(briefly explain):*

None

Phosphorus Removal and Digester Improvements Project

May 2018

Construction Update Report

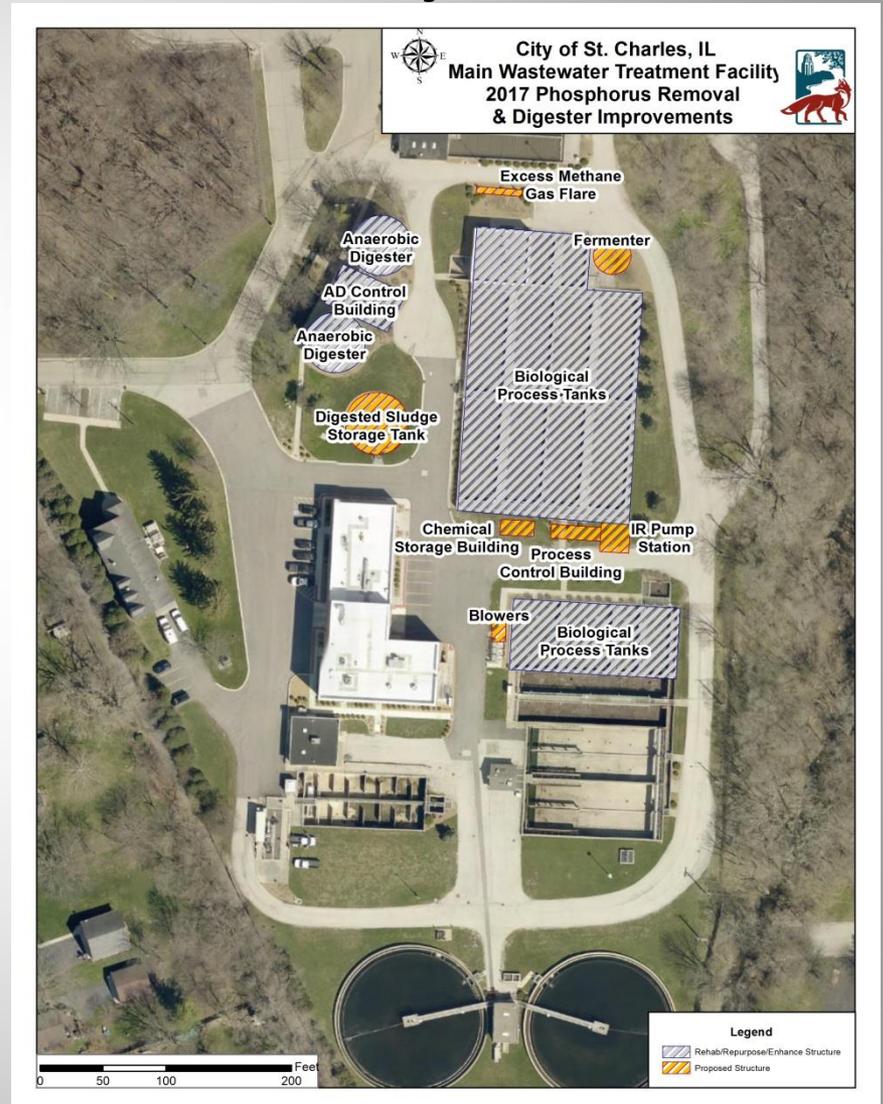
Construction Update May 2018

- Construction Contractor: IHC Construction Companies
- Project Schedule:
 - ~~Commence Construction : September 27, 2017~~
 - Chemical Feed System Online : June 1, 2018 - **Pending**
 - Substantial Completion : February 6, 2019
 - Final Completion : March 8, 2019
- Construction Contract : \$13,294,896
- Approved Contract Change Orders: \$28,308.41
- Pending Contract Change Order:\$0
- Amount Billed to Date: \$3,053,163
- Construction Percent Complete: 25%

Construction Update May 2018

Current Construction Activity

- South Anaerobic Digester
- AD Control Building
- Digested Sludge Tank
- Fermenter
- IR Pump Station
- Chemical Storage Building
- Blowers
- Biological Aeration Tanks
- Underground Piping



Construction Update Topic #1

- Electrical Motor Control Panel Manufacture Delays
 - Issue:
 - Motor Control panels are currently delayed in manufacturing at Texas Plant
 - Reason:
 - Hurricane Harvey & Irma
 - Increase Demand and Texas Manufacture Plant Damage and Cause for Delays
 - Note: Federal Funded Project Requires American Made
 - Impacts:
 - EPA June Chemical Feed Deadline
 - Overall Project Schedule
 - Solution:
 - EPA will extend June Deadline we are not the only construction project faced with this challenge
 - Overall Project Schedule: Waiting on true delivery of equipment then contractor will review his overall schedule
 - Council Action:
 - None at this time

Construction Update Topic #2

- Holes and Metal Loss in I-Beam
 - Issue:
 - Structural Issues on Catwalk over Digester
 - Reason:
 - Sand blasting uncovered holes in I-beam
 - Impacts:
 - Additional Scope of Work for Contractor
 - Solution:
 - Contractor is pricing the repairs
 - Council Action:
 - None at this time



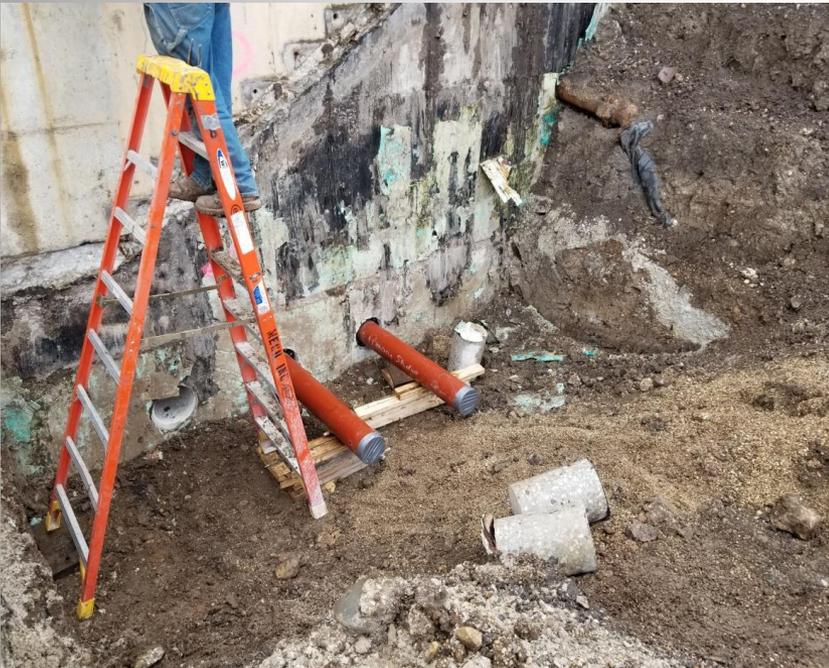
South Anaerobic Digester

- Moving Interior Piping into Digester



AD Control Building

Pipe Wall Penetrations



Boiler Equipment Pad



Digested Sludge Tank

- Hydrostatic Tested



IR Pump Station

- Pump Station Elevated Slab



Process Control Building



Underground Work

Sewer Piping & Manhole Install



Electrical Conduit to Blower Building



Underground Work

Electrical Duct Bank Installation



Site Page

- Phosphorus Removal & Digester Improvements Project Page-
 - <https://www.stcharlesil.gov/projects/2017-phosphorus-removal-and-digester-improvements>



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 4.a

Title:

Recommendation to Update Title 9 “Public Peace, Morals and Welfare” of the City Ordinance, to Include Modifications to Chapters 9.04, 9.05, 9.08, 9.14, 9.21, 9.24, 9.28, 9.44, 9.49, 9.50, and 9.52

Presenter:

Police Chief Keegan

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

In an effort to streamline and bring up to date the City Ordinance, the Police Department recommends the attached revisions be made to Title 9 “Public Peace, Morals and Welfare” of the City of St. Charles City Code. Please see the attached document which highlights these requested modifications.

Chapters to be modified include: 9.04 – False Alarms; 9.05 – Intrusion Alarm Systems; 9.08 – Assault and Battery; 9.14 – Fraudulent Schemes; 9.21 – Loitering; 9.24 – Noise; 9.28 – Begging; 9.44 – Trespass; 9.49 – Synthetic Alternative Drugs; 9.50 – Public Sale of Drug Paraphernalia; 9.52 – Curfew.

Attachments *(please list):*

* Recommended Ordinance Revisions * Ordinance with proposed changes

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve updates to Title 9 “Public Peace, Morals and Welfare” of the City Ordinance.

Police Department Recommended Ordinance Revisions to Title 9 “Public Peace, Morals and Welfare” for May 2018

9.04 – False Alarms

9.04.020 – Conditions for connection to the city remote activating equipment

G. Any individual, partnership, corporation or other entity violating this section shall be fined not less than ~~five dollars (\$5.00)~~ **twenty five dollars (\$25.00)**, nor more than five hundred dollars (~~\$500.00~~), and each day an offense continues shall be considered a separate offense.

9.05 – Intrusion Alarm Systems

9.05.110 – False alarms - Fines - Notifications

A. Any alarm user permittee who has more than two false alarms within a calendar year at a single protected location will be assessed fines according to the following fine schedule:

Three false alarms: \$25 fine per false alarm

Four ~~five~~ false alarms: \$50 fine per false alarm

~~Six~~ ~~Nine~~ Five false alarms: \$100 fine per false alarm

~~More than ten false alarms~~ Six false alarms: \$300 fine per false alarm

Seven to Ten false alarms: \$500 fine per false alarm

B. Any individual, firm, partnership, corporation, association, organization, company or other entity in control of a protected premises where an alarm system is located accused of a violation of this article may settle and compromise the claim or violation by paying to the city, within ten (10) days of the time such alleged violation or offense was committed, the amount set forth in paragraph A above. Payment of such claim or claims shall be made at the police station of the city. In the event such claim or claims are not paid within ten (10) days of the alleged offense, or if the alarm user otherwise contests the validity of the claim, a complaint **and** notice to appear in court, ~~or a warrant~~ may be issued for the alleged violation.

9.08 – Assault, ~~and~~ Battery, and Reckless Conduct

It is unlawful for a person to commit an assault. A person commits an assault when, without lawful authority, he engages in conduct which places another in reasonable apprehension of receiving battery.

9.14 – Fraudulent Schemes

9.14.010 – Fraudulent Schemes

B. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined ~~fifty (\$50)~~ **two hundred and fifty (\$250)** dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

9.21 – Loitering

9.21.010 – Loitering

E. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined ~~fifty (\$50)~~ **one hundred (\$100)** dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

9.24 – Noise

9.24.120 – Noise-generating activity prohibited – penalty

It shall be unlawful for any person to make or to continue, cause or to knowingly allow a Noise-Generating Activity, as defined in Section 9.24.020, in violation of this Chapter.

Notwithstanding any other provision of this code, any person violating any provisions of this Chapter 9.24 shall be subject to a fine not less than those established in the schedule set forth below and not more than seven hundred fifty dollars (\$750):

Description of Violation	Minimum Fine Amount
First violation in any 365 day period	\$50.00 \$100.00
Second violation in any 365 day period	\$200.00
Third violation in any 365 day period	\$300.00
Fourth violation in any 365 day period	\$400.00 \$500.00
Fifth and subsequent violations in any 365 day period	\$500.00 \$750.00

9.28 – Begging

9.28.010 – Begging

B. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined ~~fifty (\$50)~~ **one hundred (\$100)** dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

9.44 – Trespass

9.44.040 – Trespass to public property

A. It shall be unlawful for any person to commit a trespass within the City upon public property.

1. An entry upon the premises, or any part thereof, in violation of a notice posted or exhibited at the main entrance to said premises or at any point of approach or entry or in violation of any notice, warning or protest given orally or in writing, by any agent from the City; or

2. A failure or refusal to depart from the premises of the City after being requested, either orally or in writing, to leave by an agent of the City.

(Woods of Fox Glen)

B. Findings. The corporate authorities of the city of St. Charles are advised that certain storm water retention areas within the city are natural wetland areas or are designed to resemble natural wetland areas and as such require protection from trespassers in order to preserve the natural character and functioning of the retention areas. The corporate authorities are further advised that prohibiting trespassing in such areas will protect the public from injury and infectious disease.

C. Trespass to Public Property Prohibited. It shall be unlawful for any person to commit a trespass to the public area(s) described as Outlot "B" in Woods of Fox Glen Unit Two, in the city of St. Charles, Kane County, Illinois. All designated area(s) shall be clearly marked with permanent, fixed signs advising the public that the area is subject to regulation under the city of St. Charles No Trespassing Ordinance.

D. Violation - Penalty. Any person, firm or corporation violating any provision of this Section shall be fined not more than five hundred dollars for each offense, and a separate offense be deemed committed on each day on which a violation occurs or continues.

9.49 – Synthetic Alternative Drugs

NEW SECTION:

9.49.045 – Use, Sale, or Delivery of Intoxicating Compounds

9.49.045 – Use, Sale or Delivery of Intoxicating Compounds

A. Use prohibited. No person shall ingest, breathe, inhale or drink any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, the alkaloids atropine, hyoscyamine, or scopolamine, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. Such condition, so induced shall be deemed to be an intoxicated condition.

B. Sale or delivery prohibited. No person shall knowingly sell or offer for sale, deliver or give to any person under 17 years of age, unless upon written order of such person's parent or guardian, any compound, liquid, or chemical containing toluol, hexane, trichloroethylene,

acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror, or deliverer knows or has reason to know that the compound is intended for use to induce such condition.

- C. No person shall knowingly sell or offer for sale, deliver, or give to any person any compound, liquid, or chemical containing alkaloids atropine, hyoscyamine, or scopolamine when the seller, offeror, or deliverer knows or has reason to know that the compound, liquid, or chemical is intended for use to induce an intoxicated condition.

9.49.050 – Violation – Penalty

Any person, firm, corporation or other legal entity violating any provision of this chapter shall, upon conviction, be fined not less than ~~one hundred dollars (\$100)~~ ~~two hundred fifty dollars (\$250)~~ nor more than seven hundred and fifty dollars (\$750) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

9.50 – Public Sale of Drug Paraphernalia

9.50.030 – Violation - Penalty

Any person, firm or corporation violating any provision of this chapter shall be fined not less than ~~five (\$5)~~ ~~two hundred and fifty (\$250)~~ dollars nor more than ~~five hundred dollars (\$500)~~ ~~seven hundred and fifty (\$750)~~ dollars for each offense, and a separate offense shall be deemed committed on each day on which a violation occurs or continues.

9.52 – Curfew

9.52.050 – Violation - Penalty

Any person, firm or corporation violating any provisions of this chapter 9.52 shall, upon conviction, be fined ~~fifty dollars (\$50)~~ ~~one hundred dollars (\$100)~~ for the first offense, ~~one hundred dollars (\$100)~~, ~~two hundred fifty dollars (\$250)~~ for the second offense, and five hundred dollars (\$500.00) for each subsequent offense. In the alternative, any person violating any provision of this chapter 9.52 shall, upon conviction, complete twelve (12) hours of community service for the first offense, twenty-four (24) hours of community service for the second offense, and one hundred twenty (120) hours of community service for each subsequent offense. All community service shall be completed within one (1) year from the date of conviction.

City of St. Charles, Illinois
Ordinance No. 2018-M- _____

An Ordinance Amending Title 9 “Public Peace, Morals and Welfare”, Chapter 9.04 “False Alarms”, Section 9.04.020 “Conditions for Connection to the City Remote Activating Equipment”; Chapter 9.05 “Intrusion Alarm Systems”, Section 9.05.110 “False Alarms – Fines – Notifications”; Chapter 9.08 “Assault, Battery”; Chapter 9.14 “Fraudulent Schemes”, Section 9.14.010 “Fraudulent Schemes”; Chapter 9.21 “Loitering”, Section 9.21.010 “Loitering”; Chapter 9.24 “Noise”; Section 9.24.120 “Noise-generating Activity Prohibited – Penalty”; Chapter 9.28 “Begging”, Section 9.28.010 “Begging”; Chapter 9.44 “Trespass”, Section 9.44.040 “Trespass to Public Property”; Chapter 9.49 “Synthetic Alternative Drugs”, Sections 9.49.045 “Use, Sale, or Delivery of Intoxicating Compounds” and 9.49.050 “Penalty”; Chapter 9.50 “Public Sale of Drug Paraphernalia”, Section 9.50.030 “Violation – Penalty”; and Chapter 9.52 “Curfew”, Section 9.52.050 “Violation-Penalty” of the St. Charles Municipal Code

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.04 “False Alarms”, Section 9.04.020 “Conditions for connection to the city remote activating equipment”, of the St. Charles Municipal Code, be and is hereby amended as follows:

G. Any individual, partnership, corporation or other entity violating this section shall be fined not less than twenty five dollars (\$25.00) nor more than five hundred dollars (\$500.00), and each day an offense continues shall be considered a separate offense.

SECTION TWO: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.05 “Intrusion Alarm Systems”, Section 9.05.110 “False Alarms – Fines - Notifications”, of the St. Charles Municipal Code, be and is hereby amended as follows:

A. Any alarm user permittee who has more than two false alarms within a calendar year at a single protected location will be assessed fines according to the following fine schedule:

- Three false alarms: \$25 fine per false alarm
- Four false alarms: \$50 fine per false alarm
- Five false alarms: \$100 fine per false alarm
- Six false alarms: \$300 fine per false alarm
- Seven to Ten false alarms: \$500 fine per false alarm

B. Any individual, firm, partnership, corporation, association, organization, company or other entity in control of a protected premises where an alarm system is located accused of a violation of this article may settle and compromise the claim or violation by paying to the city, within ten (10) days of the time such alleged violation or offense was committed, the amount set forth in paragraph A above. Payment of such claim or claims shall be made at the police station of the city. In the event such claim or claims are not paid within ten (10) days of the alleged offense, or if the alarm user otherwise contests the validity of the claim, a complaint and notice to appear in court, or a warrant may be issued for the alleged violation.

SECTION THREE: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.08 “Assault and Battery”, of the St. Charles Municipal Code, be and is hereby amended as follows:

9.08 – Assault, Battery, and Reckless Conduct

SECTION FOUR: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.14 “Fraudulent Schemes”, Section 9.14.010 “Fraudulent Schemes”, of the St. Charles Municipal Code, be and is hereby amended as follows:

B. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined two hundred and fifty (\$250) dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION FIVE: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.21 “Loitering”, Section 9.21.010 “Loitering”, of the St. Charles Municipal Code, be and is hereby amended as follows:

E. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined one hundred (\$100) dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION SIX: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.24 “Noise”, Section 9.24.120 “Noise-generating activity prohibited – penalty”, of the St. Charles Municipal Code, be and is hereby amended as follows:

It shall be unlawful for any person to make or to continue, cause or to knowingly allow a Noise-Generating Activity, as defined in Section 9.24.020, in violation of this Chapter.

Notwithstanding any other provision of this code, any person violating any provisions of this Chapter 9.24 shall be subject to a fine not less than those established in the schedule set forth below and not more than seven hundred fifty dollars (\$750):

Description of Violation	Minimum Fine Amount
First violation in any 365 day period	\$100.00

Second violation in any 365 day period	\$200.00
Third violation in any 365 day period	\$300.00
Fourth violation in any 365 day period	\$500.00
Fifth and subsequent violations in any 365 day period	\$750.00

SECTION SEVEN: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.28 “Begging”, Section 9.28.010 “Begging”, of the St. Charles Municipal Code, be and is hereby amended as follows:

B. Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined one hundred (\$100) dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION EIGHT: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.44 “Trespass”, Section 9.44.040 “Trespass to public property”, of the St. Charles Municipal Code, be and is hereby amended as follows:

A. It shall be unlawful for any person to commit a trespass within the City upon public property.

1. An entry upon the premises, or any part thereof, in violation of a notice posted or exhibited at the main entrance to said premises or at any point of approach or entry or in violation of any notice, warning or protest given orally or in writing, by any agent from the City; or
2. A failure or refusal to depart from the premises of the City after being requested, either orally or in writing, to leave by an agent of the City.
(Woods of Fox Glen)

B. Findings. The corporate authorities of the city of St. Charles are advised that certain storm water retention areas within the city are natural wetland areas or are designed to resemble natural wetland areas and as such require protection from trespassers in order to preserve the natural character and functioning of the retention areas. The corporate authorities are further advised that prohibiting trespassing in such areas will protect the public from injury and infectious disease.

C. Trespass to Public Property Prohibited. It shall be unlawful for any person to commit a trespass to the public area(s) described as Outlot "B" in Woods of Fox Glen Unit Two, in the city of St. Charles, Kane County, Illinois. All designated area(s) shall be clearly marked with permanent, fixed signs advising the public that the area is subject to regulation under the city of St. Charles No Trespassing Ordinance.

D. Violation - Penalty. Any person, firm or corporation violating any provision of this Section shall be fined not more than five hundred dollars for each offense, and a separate offense be deemed committed on each day on which a violation occurs or continues.

SECTION NINE: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.49 “Synthetic Alternative Drugs”, of the St. Charles Municipal Code, be and is hereby amended by adding the following Section:

9.49.045 – Use, Sale or Delivery of Intoxicating Compounds

A. Use prohibited. No person shall ingest, breathe, inhale or drink any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, the alkaloids atropine, hyoscyamine, or scopolamine, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. Such condition, so induced shall be deemed to be an intoxicated condition.

B. Sale or delivery prohibited. No person shall knowingly sell or offer for sale, deliver or give to any person under 17 years of age, unless upon written order of such person's parent or guardian, any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror, or deliverer knows or has reason to know that the compound is intended for use to induce such condition.

C. No person shall knowingly sell or offer for sale, deliver, or give to any person any compound, liquid, or chemical containing alkaloids atropine, hyoscyamine, or scopolamine when the seller, offeror, or deliverer knows or has reason to know that the compound, liquid, or chemical is intended for use to induce an intoxicated condition.

SECTION TEN: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.49 “Synthetic Alternative Drugs”, Section 9.49.050 “Violation – Penalty”, of the St. Charles Municipal Code, be and is hereby amended as follows:

Any person, firm or corporation violating any provision of this chapter shall be fined not less than two hundred and fifty (\$250) dollars nor more than seven hundred and fifty (\$750) dollars for each offense, and a separate offense shall be deemed committed on each day on which a violation occurs or continues.

SECTION ELEVEN: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.50 “Public Sale of Drug Paraphernalia”, Section 9.50.030 “Violation – Penalty”, of the St. Charles Municipal Code, be and is hereby amended as follows:

Any person, firm or corporation violating any provision of this chapter shall be fined not less than two hundred and fifty (\$250) dollars nor more than seven hundred and fifty (\$750) dollars for each offense, and a separate offense shall be deemed committed on each day on which a violation occurs or continues.

SECTION TWELVE: That Title 9 “Public Peace, Morals and Welfare”, Chapter 9.52 “Curfew”, Section 9.52.050 “Violation – Penalty”, of the St. Charles Municipal Code, be and is hereby amended as follows:

Any person, firm or corporation violating any provisions of this chapter 9.52 shall, upon conviction, be fined one hundred dollars (\$100) for the first offense, two hundred fifty dollars (\$250) for the second offense, and five hundred dollars (\$500.00) for each subsequent offense. In the alternative, any person violating any provision of this chapter 9.52 shall, upon conviction, complete twelve (12) hours of community service for the first offense, twenty-four (24) hours of community service for the second offense, and one hundred twenty (120) hours of community service for each subsequent offense. All community service shall be completed within one (1) year from the date of conviction.

SECTION THIRTEEN:

That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

SECTION FOURTEEN: This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this ___ day of _____, 2018.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2018.

APPROVED by the Mayor of the City of St. Charles, Illinois, this _____ day of _____, 2018.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 4.b

Title:	Recommendation to add Chapter 8.06 “Public-Owned Boat Launch” to Title 8 “Health and Safety” of the City Ordinance
Presenter:	Police Chief Keegan

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: N/A Budgeted Amount: \$ Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The Police Department recommends that Chapter 8.06 “Public-Owned Boat Launch” be added to the City of St. Charles City Code.

The Police Department has worked with the St. Charles Park District on the addition of this chapter. This chapter encompasses all public-owned boat launches, which includes those owned by the Park District. The chapter includes restrictions, exemptions, and penalties for violations.

Please see the attached document which includes the verbiage for this proposed addition to the City Code.

Attachments *(please list):*

* Recommended Ordinance Revisions * Ordinance with proposed changes

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve addition of Chapter 8.06 “Public-Owned Boat Launch” to Title 8 “Health and Safety” of the City Ordinance.

Police Department Recommended Ordinance Revisions to Title 8 “Health and Safety” for May 2018

NEW CHAPTER:

8.06 – Public-Owned Boat Launch

Sections

8.06.010 – Restrictions

8.06.020 – Exemptions

8.06.030 – Violation - Penalty

8.06.010 – Restrictions

It is unlawful for any person to cause or permit a boat or personal watercraft to park or otherwise be left unattended at any Public-Owned boat launch or public access point to the Fox River: (a) within the corporate limits of the City; and (b) in excess of three (3) hours.

Said notice shall be clearly posted and police enforced. For boats and watercrafts left unattended, notice shall be personally given to the watercraft owner(s) and/or a tow sticker shall be applied to watercrafts left unattended and in violation of said ordinance. If the watercraft is not moved within 48-hours of notice/posting or if an emergency situation exists which cause the immediate removal of the watercraft, the owner(s) shall bear the expense of the removal and any associated fees/costs.

8.06.020 – Exemptions

The prohibition set forth herein shall not apply to any person with a valid life emergency where emergency personnel have been summoned or otherwise alerted to the scene.

The prohibition set forth herein shall not apply to any public entity, including, but not limited to, the government of any state, the United States of America and any department, agency or subdivision thereof.

8.06.030 – Violation - Penalty

Any person who violates this Chapter shall be fined not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) for each offense with each offense constituting a separate offense.

City of St. Charles, Illinois
Ordinance No. 2018-M- _____

An Ordinance Amending Title 8 “Health and Safety”, by adding Chapter 8.06 “City/Public Owned Boat Launch”, Section 8.06.010 “Restrictions”, Section 8.06.020 “Exemptions”, and Section 8.06.030 “Violation – Penalty”

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: That Title 8 “Health and Safety” of the St. Charles Municipal Code, be and is hereby amended by adding in its entirety:

Chapter 8.06 – Public-Owned Boat Launch

Sections

8.06.010 – Restrictions

8.06.020 – Exemptions

8.06.030 – Violation – Penalty

8.06.010 – Restrictions

It is unlawful for any person to cause or permit a boat or personal watercraft to park or otherwise be left unattended at any Public-Owned boat launch or public access point to the Fox River: (a) within the corporate limits of the City; and (b) in excess of three (3) hours.

Said notice shall be clearly posted and police enforced. For boats and watercrafts left unattended, notice shall be personally given to the watercraft owner(s) and/or a tow sticker shall be applied to watercrafts left unattended and in violation of said ordinance. If the watercraft is not moved within 48-hours of notice/posting or if an emergency situation exists which cause the immediate removal of the watercraft, the owner(s) shall bear the expense of the removal and any associated fees/costs.

8.06.020 – Exemptions

The prohibition set forth herein shall not apply to any person with a valid life emergency where emergency personnel have been summoned or otherwise alerted to the scene.

The prohibition set forth herein shall not apply to any public entity, including, but not limited to, the government of any state, the United States of America and any department, agency or subdivision thereof.

8.06.030 – Violation - Penalty

Any person who violates this Chapter shall be fined not less than fifty dollars (\$50) nor more than seven hundred fifty dollars (\$250) for each offense with each offense constituting a separate offense.

SECTION TWO: That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

SECTION THREE: This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2018.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2018.

APPROVED by the Mayor of the City of St. Charles, Illinois, this ____ day of _____, 2018.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 4.c

Title: Recommendation to Update Title 5 “Business Licenses and Regulations” of the City Ordinance, to Include Modifications to Chapters 5.28 “Peddlers” and 5.36 “Solicitors”

Presenter: Police Chief Keegan

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

In an effort to streamline and bring up to date the City Ordinance, the Police Department recommends the attached revisions be made to Title 5 of the City of St. Charles City Code. Please see the attached document which highlights these requested modifications.

Chapters to be modified include 5.28 – Peddlers; and 5.36 – Solicitors.

Attachments *(please list):*

* Recommended Ordinance Revisions * Ordinance with proposed changes

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve updates to Title 5 “Business Licenses and Regulations” of the City Ordinance.

Police Department Recommended Ordinance Revisions to Title 5 “Business Licenses and Regulations” for May 2018

~~5.28 – Peddlers (Delete the Entire Section/In Its Entirety)~~

~~Sections~~

~~5.28.010 – License – Required~~

~~5.28.020 – License – Application – Contents~~

~~5.28.040 – Violation – Penalty~~

~~5.28.010 – License – Required~~

~~It is unlawful for any person, firm or corporation to engage in the business of hawker or peddler of any merchandised article or thing in the village, without first having obtained a license therefor.~~

~~5.28.020 – License – Application – Contents~~

~~Applications for such licenses shall be made to the clerk, and shall state thereon the number of vehicles, if any, intended to be operated; the kind of article or merchandise to be peddled; and the permanent address of the peddler.~~

~~5.28.040 – Violation – Penalty~~

~~Any person, firm or corporation violating any provision of this chapter shall be fined not less than five dollars nor more than five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.~~

5.36 – Solicitors

5.36.030 – Commercial Solicitation/~~Peddling~~; Registration

COMMERCIAL SOLICITATION/~~PEDDLING~~: Seeking to ~~sell or “hawk” merchandise or~~ obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services of any kind, character or description whatever, for any kind of consideration whatever; seeking to obtain subscriptions to books, magazines, periodicals , etc.

5.36.020 – Charitable Solicitation; Registration

- A. It shall be unlawful for any charitable organization to engage in charitable solicitation within the corporate limits of the City unless such organization has ~~notified registered with~~ the City as hereinafter provided.

B. Any charitable organization engaging in charitable solicitation within the corporate limits of the City shall ~~make notification of~~ register the following information with the Chief of Police or his designee:

1. The name and address of the charitable organization and the name or names under which it intends to engage in solicitation.
2. The names and addresses of all persons who will engage in charitable solicitation in the City.
3. The dates and time of day such solicitations are to be made and the geographic areas within the City wherein such solicitation shall be conducted at a particular time and day.
4. A written statement of recent date issued by the attorney general of Illinois that the charitable organization has complied with the provisions of 225 Illinois Compiled Statutes 460/ 1 et seq., or a written statement by the attorney general of exemption under 225 Illinois Compiled Statutes 460/3.

5.36.030 – Commercial Solicitation/~~Peddling~~; Registration

A. It shall be unlawful for any person to engage in commercial solicitation/~~peddling~~ within the corporate limits of the City unless such person shall have first obtained approved registration from the City as hereinafter provided.

1. Application for registration shall be made upon a form provided by the City. The applicant shall truthfully state in full the following information and submit the following documentation:

2. The name and address of the person who intends to engage in solicitation/~~peddling~~.

1. The name and address of the person or organization by whom the applicant is employed or represents, and the length of time of such employment or representation.

2. The name and address of the person in charge of solicitation/~~peddling~~ in the City and an address within the state of Illinois where service of process may be had.

3. Applicant shall submit his or her driver's license or state ID number and date of birth, as well as a physical description of applicant.

4. The dates and time of day such solicitation/~~peddling~~ is to be made and the geographic area within the City wherein such solicitation shall be conducted at a particular time and day.

5. The date, or approximate date, of the latest previous application for registration under this ordinance, if any.

6. Whether a registration issued to the applicant under this ordinance has ever been revoked.

7. Whether the applicant has been convicted of a violation of any of the provisions of this ordinance or the ordinances of any other Illinois municipality regulating solicitation.

8. A description sufficient for identification of the subject matter of the solicitation/~~peddling~~ which the applicant will engage in.

9. Whether the applicant has ever been convicted of the commission of a felony under the laws of the state of Illinois or any other state, or of a law of the United States.

10. An electronic headshot photo of each applicant in an approved format.

11. Proof of submission for Uniform Conviction Information Act through a fingerprint conviction information request with an approved Livescan Vendor with the Illinois State Police.

- B. An application for registration shall be submitted to the Chief of Police and shall be verified under oath. The Chief of Police shall acknowledge receipt of such application in writing within five (5) working days of such receipt and shall act upon such application within ten (10) ~~working~~ days after its receipt. No application shall be effective until acted upon by the Chief of Police. If the Chief of Police finds and determines that all the requirements of this ordinance have been met, the Chief of Police shall issue said approval forthwith. Registration shall be valid for 90 days from the date of issue.
- C. The failure of an applicant to fulfill the requirements of this ordinance shall be a basis for the denial of an approved registration by the Chief of Police. In addition, no approved registration shall be issued to any person who has been convicted of a felony under the laws of the state Illinois or any other state or under the laws of the United States; nor to any person who has been convicted of a sex offense as defined by 720 Illinois Compiled Statutes, Act 5, Article 11 or any other equivalent law of any other state; nor to any person who has been convicted of a violation of any of the provisions of this ordinance; nor to any person whose registration issued hereunder has previously been revoked as herein provided. In the event that any registration is denied for failure to comply with the requirements set forth hereinabove, the Chief of Police shall immediately notify the applicant, in writing, of the reasons for denial. If said application is not cured within ten (10) ~~working~~ days after the date on which the Chief of Police denies the issuance of said registration, said application shall be null and void.
- D. The Chief of Police shall revoke an approved registration for a violation of any of the ~~provisions of this chapter regulations listed in sections 5.36.050 through 5.36.090 of this ordinance, inclusive~~. Immediately upon such revocation, written notice thereof shall be given by the Chief of Police to the holder of the approved registration by certified or registered mail, return receipt requested, ~~or by personal service~~. Upon receipt of said notice of revocation, all solicitation activity shall cease.

5.36.040 – Registration fee

The fee for application and approval of registration required to engage in commercial solicitation/**peddling** pursuant to this ordinance shall be fifty dollars (\$50.00) per applicant. Said fee shall be paid at the time of application and prior to the processing of said application.

5.36.090 – Prohibitions

- A. Felons and Persons Convicted of Sex Offenses as Solicitors: It shall be unlawful for any person to be a solicitor who has been convicted of a felony under the laws of the state of Illinois, or any equivalent law of any other state, or under the federal laws of the United States. It shall be unlawful for any person to be a solicitor who has been convicted of a sex offense as defined by 720 Illinois Compiled Statutes, Act 5, Article 11, or any equivalent law of any other state.
- B. Fraud: No person shall misrepresent his name, occupation, financial condition, social conditions or residence, and no person shall make or perpetrate any other misstatement, deception or fraud, in connection with any charitable or commercial solicitation, or in any application or report filed under this ordinance.
- C. **Number of Solicitors permitted: No more than two (2) persons shall go upon or approach any premises at any one time for purposes of soliciting or peddling.**
- D. **Principal Approach and Entrance Only: Every solicitor shall approach a premises only by using the principal approach route thereto, and every solicitor shall attempt to make contact with the occupants thereof only at the principal entrance to such premises. No solicitor shall gain entry to any enclosed portion of the premises without invitation and whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.**

5.36.100 – Additional Regulations for Charitable Solicitations

- A. Financial Disclosure Required: The charitable organization shall, **upon request**, distribute to every person solicited a financial statement of said charitable organization for the preceding twelve (12) months which shall include a balance sheet and statement of income and expenses clearly setting forth the following: gross receipts and gross income from all sources broken down into total receipts and income from each separate solicitation project or source; cost of administration ; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of the state of Illinois, with explanation as to recipient and purpose; total net income amount for each major purpose, charitable or otherwise. Statements shall be signed by the president or other authorized officer or agent and shall be accompanied by an opinion signed by an independent certified public accountant that said financial statement fairly represents the financial operation of the charitable organization.

A copy of the annual report to the attorney general of Illinois required by 225 Illinois Compiled Statutes 460/4, as amended, may be presented in lieu of the aforementioned financial statement. For the purpose of financial statements, the definitions and standards applicable to the annual report to the attorney general as set forth in paragraph 460/4 shall be utilized.

In the event a charitable organization has not been established for a period of twelve (12) months, a copy of the registration statement filed with the attorney general of Illinois pursuant to 225 Illinois Compiled Statutes 460/2, as amended, may be utilized.

5.36.120 – Violation – Penalty

Any person violating any of the provisions of this chapter shall, ~~be or plea, be fined one hundred dollars (\$100.00) for the first offense~~ fined one hundred dollars (\$100) for the first offense thereof, and be subject to a fine of not more than five hundred dollars (\$500) for each ~~subsequent~~ offense.

City of St. Charles, Illinois
Ordinance No. 2018-M- _____

An Ordinance Amending Title 5 “Business Licenses and Regulations”, Chapter 5.28 “Peddlers”; Chapter 5.36 “Solicitors”, Section 5.36.020 “Charitable Solicitation; Registration”, Section 5.36.030 “Commercial Solicitation/Peddling; Registration”, Section 5.36.040 “Registration Fee”, Section 5.36.100 “Additional Regulations for Charitable Solicitations”, Section 5.36.120 “Violation-Penalty” of the St. Charles Municipal Code

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: That Title 5 “Business Licenses and Regulations”, Chapter 5.28 “Peddling” of the St. Charles Municipal Code, be and is hereby amended by deleting in its entirety:

5.28.010 – License - Required
5.28.020 – License - Application - Contents
5.28.040 – Violation - Penalty

5.28.010 – License – Required

It is unlawful for any person, firm or corporation to engage in the business of hawker or peddler of any merchandised article or thing in the village, without first having obtained a license therefor.

5.28.020 – License - Application - Contents
Applications for such licenses shall be made to the clerk, and shall state thereon the number of vehicles, if any, intended to be operated; the kind of article or merchandise to be peddled; and the permanent address of the peddler.

5.28.040 – Violation - Penalty
Any person, firm or corporation violating any provision of this chapter shall be fined not less than five dollars nor more than five hundred dollars for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION TWO: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.020 “Charitable Solicitation; Registration”, of the St. Charles Municipal Code, be and is hereby amended as follows:

A. It shall be unlawful for any charitable organization to engage in charitable solicitation within the corporate limits of the City unless such organization has notified the City as hereinafter provided.

B. Any charitable organization engaging in charitable solicitation within the corporate limits of the City shall make notification of the following information with the Chief of Police or his designee:

1. The name and address of the charitable organization and the name or names under which it intends to engage in solicitation.
2. The names and addresses of all persons who will engage in charitable solicitation in the City.
3. The dates and time of day such solicitations are to be made and the geographic areas within the City wherein such solicitation shall be conducted at a particular time and day.
4. A written statement of recent date issued by the attorney general of Illinois that the charitable organization has complied with the provisions of 225 Illinois Compiled Statutes 460/ 1 et seq., or a written statement by the attorney general of exemption under 225 Illinois Compiled Statutes 460/3.

SECTION THREE: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.030 “Commercial Solicitation; Registration”, of the St. Charles Municipal Code, be and is hereby amended as follows:

5.36.030 – Commercial Solicitation/Peddling; Registration

A. It shall be unlawful for any person to engage in commercial solicitation/peddling within the corporate limits of the City unless such person shall have first obtained approved registration from the City as hereinafter provided.

1. Application for registration shall be made upon a form provided by the City. The applicant shall truthfully state in full the following information and submit the following documentation:
 1. The name and address of the person or organization by whom the applicant is employed or represents, and the length of time of such employment or representation.
 2. The name and address of the person in charge of solicitation/peddling in the City and an address within the state of Illinois where service of process may be had.
 3. Applicant shall submit his or her driver's license or state ID number and date of birth, as well as a physical description of applicant.

4. The dates and time of day such solicitation/peddling is to be made and the geographic area within the City wherein such solicitation shall be conducted at a particular time and day.

5. The date, or approximate date, of the latest previous application for registration under this ordinance, if any.

6. Whether a registration issued to the applicant under this ordinance has ever been revoked.

7. Whether the applicant has been convicted of a violation of any of the provisions of this ordinance or the ordinances of any other Illinois municipality regulating solicitation.

8. A description sufficient for identification of the subject matter of the solicitation/peddling which the applicant will engage in.

9. Whether the applicant has ever been convicted of the commission of a felony under the laws of the state of Illinois or any other state, or of a law of the United States.

10. An electronic headshot photo of each applicant in an approved format.

11. Proof of submission for Uniform Conviction Information Act through a fingerprint conviction information request with an approved Livescan Vendor with the Illinois State Police.

B. An application for registration shall be submitted to the Chief of Police and shall be verified under oath. The Chief of Police shall acknowledge receipt of such application in writing within five (5) working days of such receipt and shall act upon such application within ten (10) working days after its receipt. No application shall be effective until acted upon by the Chief of Police. If the Chief of Police finds and determines that all the requirements of this ordinance have been met, the Chief of Police shall issue said approval forthwith. Registration shall be valid for 90 days from the date of issue.

C. The failure of an applicant to fulfill the requirements of this ordinance shall be a basis for the denial of an approved registration by the Chief of Police. In addition, no approved registration shall be issued to any person who has been convicted of a felony under the laws of the state Illinois or any other state or under the laws of the United States; nor to any person who has been convicted of a sex offense as defined by 720 Illinois Compiled Statutes, Act 5, Article 11 or any other equivalent law of any other state; nor to any person who has been convicted of a violation of any of the provisions of this ordinance; nor to any person whose registration issued hereunder has previously been revoked as herein provided. In the event that any registration is denied for failure to comply with the requirements set forth hereinabove, the Chief of Police shall immediately notify the applicant, in writing, of the reasons for denial. If said application is not cured within ten

(10) working days after the date on which the Chief of Police denies the issuance of said registration, said application shall be null and void.

D. The Chief of Police shall revoke an approved registration for a violation of any of the provisions of this chapter. Immediately upon such revocation, written notice thereof shall be given by the Chief of Police to the holder of the approved registration by certified or registered mail, return receipt requested, or by personal service. Upon receipt of said notice of revocation, all solicitation activity shall cease.

SECTION FOUR: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.040 “Registration Fee”, of the St. Charles Municipal Code, be and is hereby amended as follows:

The fee for application and approval of registration required to engage in commercial solicitation/peddling pursuant to this ordinance shall be fifty dollars (\$50.00) per applicant. Said fee shall be paid at the time of application and prior to the processing of said application.

SECTION FIVE: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.100 “Additional Regulations for Charitable Solicitations”, of the St. Charles Municipal Code, be and is hereby amended as follows:

A. Financial Disclosure Required: The charitable organization shall, upon request, distribute to every person solicited a financial statement of said charitable organization for the preceding twelve (12) months which shall include a balance sheet and statement of income and expenses clearly setting forth the following: gross receipts and gross income from all sources broken down into total receipts and income from each separate solicitation project or source; cost of administration ; cost of solicitation; cost of programs designed to inform or educate the public; funds or properties transferred out of the state of Illinois, with explanation as to recipient and purpose; total net income amount for each major purpose, charitable or otherwise. Statements shall be signed by the president or other authorized officer or agent and shall be accompanied by an opinion signed by an independent certified public accountant that said financial statement fairly represents the financial operation of the charitable organization.

A copy of the annual report to the attorney general of Illinois required by 225 Illinois Compiled Statutes 460/4, as amended, may be presented in lieu of the aforementioned financial statement. For the purpose of financial statements, the definitions and standards applicable to the annual report to the attorney general as set forth in paragraph 460/4 shall be utilized.

In the event a charitable organization has not been established for a period of twelve (12) months, a copy of the registration statement filed with the attorney general of Illinois pursuant to 225 Illinois Compiled Statutes 460/2, as amended, may be utilized.

SECTION SIX: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.120 “Violation – Penalty”, of the St. Charles Municipal Code, be and is hereby amended as follows:

Any person violating any of the provisions of this chapter shall be fined one hundred dollars (\$100) for the first offense thereof, and be subject to a fine of not more than five hundred dollars (\$500) for each subsequent offense.

SECTION SEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.36 “Solicitors”, Section 5.36.090 “Prohibitions”, of the St. Charles Municipal Code, be and is hereby amended adding the following:

- C. Number of Solicitors permitted: No more than two (2) persons shall go upon or approach any premises at any one time for purposes of soliciting or peddling.
- D. Principal Approach and Entrance Only: Every solicitor shall approach a premises only by using the principal approach route thereto, and every solicitor shall attempt to make contact with the occupants thereof only at the principal entrance to such premises. No solicitor shall gain entry to any enclosed portion of the premises without invitation and whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

SECTION EIGHT: That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

SECTION NINE: This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2018.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2018.

APPROVED by the Mayor of the City of St. Charles, Illinois, this ____ day of _____, 2018.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 4.d

Title:

Recommendation to Approve Street Closure for Baker Memorial Church Car Wash to be held on June 16, 2018

Presenter:

Police Chief Keegan

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$N/A

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

This application was submitted on May 1, 2018.

For the third year in a row, the Baker Memorial United Methodist Church is requesting to hold a car wash as a fundraiser for a mission trip. The date requested is:

Saturday, June 16, 2018

The carwash is to be held from 8:00 a.m. – 12:00 p.m.

Vehicles will be directed to enter the car wash area from the north at Cedar Avenue and N. 4th Avenue. Vehicles exiting the car wash area will be prohibited from turning left (east) on to E. Main Street.

The event organizers have requested to close N. 4th Avenue between E. Main Street and Cedar Avenue. This is the same closure which is used each Friday for the Farmer’s Market. No issues were reported with this event last year.

Attachments *(please list):*

None

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve closure of N. 4th Avenue for Baker Memorial car wash on June 16, 2018.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 4.e

Title: 2018 IBB For Pitties – Information only
Presenter: Police Chief Keegan

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: \$180.14 (PW) Budgeted Amount: \$ Not Budgeted:

Executive Summary *(if not budgeted please explain):*

This special event application was received on April 14, 2018 and the special event committee met with one of the event organizers to discuss their needs for this event on May 8th. The Park District was represented during this meeting and worked directly with the event organizer on their needs for that day.

IBB for Pitties is a 5KRun/Walk event that the Players for Pits organization would like to hold on Saturday, July 14, 2018 in Mt. St. Mary’s Park. Players for Pits is an Illinois based 5013C no-kill rescue committed to saving pit bulls and pit bull mix breed dogs. Proceeds from this event will go towards furthering their rescue and adoption efforts.

Dogs will not be running/walking with participants; however, adoptable dogs will be available for viewing at the end of the event. Adoptions will not take place on site. An estimated 150 people are expected to attend this event from 7:00 am – noon; this includes set-up and take-down.

This is the first year for this event. No road or parking lot closures are requested for this event. The group hopes to make this an annual event.

Attachments *(please list):*

* Event Map

Recommendation/Suggested Action *(briefly explain):*

Information purposes only.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.a

Title:

Design Development Presentation and Cost Estimate Review for the Police Station Project

Presenter:

Peter Suhr, Jim Keegan, FGM Architects, Riley Construction

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary (if not budgeted please explain):

As previously discussed, our project team is completing the Design Development Phase of the project and is seeking your informal approval to proceed to the Construction Documents Phase of the project. Our team will present a Design Development Site Plan, Floor Plans and Elevations for your consideration and comment. Also, we will review the second of several Construction Management Cost Estimates to verify we're on target to deliver a final project on budget. At this stage of the project, we want to make sure that the committee continues to support the design and layout of the project so that our team can start to develop construction documents and specifications in preparation for bidding. Any minor comments or suggestions by the committee can be considered and adjusted in the next phase which will keep us on schedule.

For your information, please find below a list of anticipated project milestones that will require the Committee's formal or informal approval:

- Schematic Design Approval February 2018
- Bid Package #1 Bid Award April 2018 Note: Demo & Abatement Work
- **Design Development Approval May 2018**
- Bid Package #2 Bid Award July 2018 Note: Structure & Shell Work
- Bid Package #3 Bid Award October 2018 Note: Building Finish & Interior Work
- Construction Change Orders (In Excess of \$25K) TBD (as needed)

Attachments (please list):

None

Recommendation/Suggested Action (briefly explain):

Informal Approval of the Design Development Phase and Advancement to Proceed to the Construction Documents Phase of the Police Station Project



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.b

Title:

Recommendation to Waive the Formal Bid Procedure for Bid Package #2 and Bid Package #3 for the Police Station Project

Presenter:

Peter Suhr, Jim Keegan, Riley Construction

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

In preparation for the upcoming Police Station Bid Package #2 Award in July and subsequent Bid Package #3 Award in October, staff is requesting City Council to waive the bid procedure and instead accept quotations from pre-qualified contractors and sub-contractors. Staff and Riley Construction recognize the need to be fiscally responsible on this project and therefore will be transparent with all proposals received prior to recommendations. We request waiving the bid procedure for the following reasons:

- Due to the complexity of Bid Package #2 and Bid Package #3, including multiple sub-contractors, alternative proposal options and unit prices, staff would prefer to have the flexibility to evaluate and recommend each proposal as it relates to the overall project.
- Staff understands based on the City’s Policy Regarding Local Vendor Preference, that there is a general interest to hire local contractors. By waiving the bid procedure, staff can evaluate and recommend if opportunities arise.
- Often times with a complex project such as this, a particular contractor may have a volunteer alternative or creative idea resulting in cost reductions. Staff would prefer to have the ability to discuss, negotiate and implement such alternatives with contractors after proposals are open and prior to recommendation to Committee.
- As required for Bid Package #1, contractors will be pre-qualified in advance of receiving final quotes; therefore the qualification process associated with the bid procedure is not necessary.

Attachments *(please list):*

* Bid Waiver Form

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Waive the Formal Bid Procedure for Bid Package #2 and Bid Package #3 for the Police Station Project.

REQUEST FOR WAIVING BID PROCEDURE

We request the City Council to waive the bid procedure and accept the quotation (requiring two-thirds City Council vote) submitted by:

(NAME AND ADDRESS OF VENDOR)

For the purchase of: Construction Services.

At a cost not to exceed: (PRICING INFORMATION).

Reason for the request to waive the bid procedure: Due to the complexity of Bid Package #2 and Bid Package #3 for the Police Station project, including multiple sub-contractors, alternative proposal options and unit prices, staff would prefer to have the flexibility to evaluate each proposal as it relates to the overall project and recommend proposals based not solely on cost. In addition, staff may recommend a local contractor over another based on the City's Policy Regarding Local Vendor Preference. In addition, often times with a complex project such as this, a particular contractor may have a volunteer alternative or creative idea resulting in cost reductions. Staff would prefer to have the ability to negotiate such alternatives with contractors prior to recommendation to Committee. In addition, as required for Bid Package #1, contractors will be pre-qualified in advance of receiving final quotes; therefor the qualification process associated with the bid procedure is not necessary.

Other Quotations Received: See Final Bid Tabulation

Date: 29 May 2018

Requested by: Chief Jim Keegan & Peter Suhr

Department Director: Jim Keegan & Peter Suhr

Purchasing Manager: Joan Schouten

THIS REQUEST FORM MUST BE SIGNED BY ALL PARTIES PRIOR TO REQUESTING COMMITTEE APPROVAL FOR WAIVING OF THE BID PROCEDURE. REQUESTS FORWARDED DIRECTLY TO THE CITY COUNCIL (AND BYPASSING COMMITTEE) MUST BE SIGNED BY ALL PARTIES PRIOR TO REQUESTING CITY COUNCIL APPROVAL. SUCH REQUESTS ARE TO BE OF AN EMERGENCY NATURE WHERE TIME IS OF THE ESSENCE.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.d

Title:

Consideration to Approve Limited License Agreement with Syndeo for Fiber Installation within St. Charles ROW

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Syndeo is a registered telecommunication utility with the Illinois Commerce Commission. As such, they have the right to install facilities in public rights-of-way. Syndeo does not sell any programming “content” that would make them subject to a franchise, they sell simply the “point-to-point” communication services via leasing fiber.

Syndeo approached the City to install a fiber optic underground cable on Cardinal Drive. After consulting with the City Attorney, it was decided that creating a Limited License Agreement between Syndeo and the City would be the best way to process their request to place their private facilities in the public right-of-way. This license agreement insures that Syndeo is responsible for locating the fiber if the City has a project digging near it. It also covers relocation of the fiber should the City have a roadway project that requires such.

The agreement was drafted by Public Works and the City Attorney. Syndeo has accepted the agreement as presented here.

Attachments *(please list):*

* Limited License Agreement

Recommendation/Suggested Action *(briefly explain):*

Consideration to approve a Limited License Agreement with Syndeo for Installation of Fiber in the City’s Rights-of-Way.

LIMITED LICENSE AGREEMENT

This Agreement made this _____ day of June, 2018 (hereinafter the “Effective Date”) by and between THE CITY OF ST. CHARLES, a municipal corporation of the State of Illinois, hereinafter referred to as “City”, and Syndeo, hereinafter referred to as “Licensee”.

W I T N E S S:

WHEREAS, the City of St. Charles and Licensee desire to establish a framework for Right-Of-Way use by the City of St. Charles under the terms and conditions set forth below;

WHEREAS, the conditions determining such Right-of-Way use shall depend upon the service requirements to be met by each party, including considerations of safety and economy;

WHEREAS, the City of St. Charles and the Licensee agree that it is in the interest of both parties to have orderly and coordinated use of Right-of-Way space;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

This Limited License Agreement covers Rights-of-Way under the City of St. Charles jurisdictions for underground installations. No above grade facilities shall be placed. Any hand-holes or access boxes shall be flush mount with existing grade.

Licensee shall be responsible to obtain any and all other permits, easements or agreements required by other jurisdictions or private property owners.

This Limited License Agreement expressly does not grant Licensee the rights to use public utility easements unless the Licensee is specifically named in such easement dedication.

Section 2. Specifications & Requirements.

A. Each installation shall be required to submit for a Right-of-Way permit.

1. This permit submittal shall include scaled drawings showing the proposed installation, method of installation, existing utilities, Right-of-Way limits, and restoration methods. The submittal must also include the engineer estimated cost of the installation.
2. Where road crossings are needed, open cutting of existing pavement areas should be avoided to the extent possible.

3. The City of St. Charles retains the right to “approve” or require modifications to the installation methods, installation location, and all details of the work prior to issuance of the permit to the Licensee. Licensee shall not begin work prior to receipt of an approved permit.
 4. Traffic control and protection shall be provided in accordance with the Illinois Department of Transportation “Standard Specifications for Road and Bridge Construction”, latest edition; the Illinois Department of Transportation “Standard Specifications for Traffic Control Items”, latest edition; and the Manual on Uniform Traffic Control Devices, latest edition. Any road or lane closures must be identified specifically on the permit submittal drawings.
 5. If greater than 1 acre of land is being disturbed, a Notice of Intent will need to be submitted through the Illinois Department of Natural Resources, which may also require a Stormwater Pollution and Prevention Plan (SWPPP) to be prepared.
 6. Soil erosion and sedimentation control shall be provided in accordance with City standards.
 7. In accordance with the engineer estimate, at the judgement of the City of St. Charles, the Licensee will be required to post a letter of credit prior to starting work. The purpose of this letter of credit is to ensure that the public Right-of-Way is restored satisfactorily or not otherwise damaged. Should the Licensee default on restoration or repair of the Right-of-Way, the City may use the Licensee funds to effect proper restoration or repair as necessary.
 8. Licensee is required to provide “as-built” drawings showing actual location of facilities with respect to Right-of-Way limits and other utilities. Drawings shall also include the depth of the installed facilities.
- B. For as long as the Licensee has facilities in the Right-of-Way, the Licensee shall be active members of the Joint Utility Locating Information for Excavators (JULIE, Inc) such that the City or other Contractors digging in the Right-of-Way will only need to contact JULIE to have the Licensee facilities located. Documentation shall be provided to the City indicating Licensee is an active member.
- C. The Licensee shall be responsible for the relocation of their facilities if such facilities interfere with future City needs. In the event that such relocation is deemed necessary by the City, the Licensee shall be responsible for all costs associated with the physical relocation of Licensee facilities. Said relocation shall require submittal of a Right-of-Way permit to ensure that the relocation is coordinated with the City needs.
- D. Licensee shall provide a 24 hour emergency number for the City to use in emergencies related to Licensee facilities.

- E. Any flush mounted hand-holes or access boxes shall be installed in such a way as to not interfere with Right-of-Way maintenance or mowing.

Section 3. Maintenance of Facilities.

Licensee shall, at its own expense, maintain its facilities in a safe and serviceable condition. Moreover, in the event that City determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate, replace, or repair said facilities within 30 days of written notification, to restore them in a safe condition. However, in the case of emergencies, City may temporarily relocate Licensee's facilities, and the cost of such relocation, shall be reimbursed by the Licensee to City.

Section 4. Defaults.

- A. Notice of Violation or Default. In the event the City believes that the Licensee has not complied with a material terms of the Limited License Agreement, it shall notify the Licensee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
- B. Licensee's Right to Cure or Respond. The Licensee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.
- C. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 4.B above, in the event the City determines that the Licensee remains in default of any material provision of the Limited License Agreement, the City may:
 - 1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or
 - 2. in the case of a substantial or frequent default of a material provision of the Limited License Agreement, declare the Limited License Agreement to be revoked in accordance with the following:

The City shall give written notice to the Licensee of its intent to revoke the Limited License Agreement on the basis of a pattern of noncompliance by the Licensee. The notice shall set forth with specificity the exact nature of the noncompliance. The Licensee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Licensee or upon receipt of the response does not agree with the

Licensee's proposed remedy or in the event that the Licensee has not taken action to cure the default, it may then seek termination of the Limited License Agreement at a public hearing. The City shall cause to be served upon the Licensee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Limited License Agreement.

At the designated hearing, the City shall give the Licensee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Limited License Agreement shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Licensee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Licensee in a manner authorized by Section 6. Any final decision by the City shall constitute a final determination for purpose of judicial review and shall be subject to the Illinois Administrative Review Act (735 ILCS 5/3-101 et seq.)

Upon termination of the Limited License Agreement, Licensee shall be required to submit a Right-of-Way permit to remove all facilities from the Right-of-Way, with proper restoration, solely at Licensee expense.

Section 5. Indemnification.

The Licensee shall indemnify, defend and hold harmless the City from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use of the Right-of-Way pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the City which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the City and provided further that the City shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the City may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the City for expenses incurred by it in case of the election so to assist.

Contractors performing work on behalf of the Licensee shall provide the City with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of St. Charles as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

The City requires the Licensee to provide and maintain insurance consistent with Exhibit A.

Section 6. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to City as follows:

Director of Public Works
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174

and to Licensee as follows:

Syndeo
300 Cardinal Dr, Suite 110
St. Charles, IL, 60175

or to such address as the parties hereto may from time to time specify.

Section 7. Term of Agreement.

Subject to the provisions herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the “Initial Term”), and thereafter from year to year (each year a “Renewal Term”) unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial Term or any Renewal Term.

Section 8. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the installations covered by this Agreement, to any firm, corporation, or individual, without the written consent of City, which consent shall not be unreasonably withheld, except that Licensee may, without the prior consent of the City, assign all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate of Licensee; (ii) a purchaser of all or substantially all of Licensee’s assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Licensee is participating. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. For the purposes of the Section, “Affiliate” means, any entity that controls or is controlled by Licensee, or is under common control Licensee. Nothing herein contained shall prevent or limit the right of Licensee to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger or consolidation and, in the case of the foreclosing of such

mortgage or in the case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the installations covered by this Agreement used by Licensee, in the conduct of its said business. All such installations shall be considered as the installations of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such installations, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

Section 9. Scope of Right of Licensee.

No use by Licensee of City's Right-of-Way under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said Right-of-Way, but Licensee's rights herein shall be and remain a mere license.

Section 10. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 11. Existing Contracts or Agreements.

Any existing agreements between these parties, whether verbal or written, covering the use of City Rights-of-Way are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

Witness:

THE CITY OF ST. CHARLES

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness:

SYNDEO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.e

Title:

Recommendation to Approve Franchise Agreement and Pole Attachment Agreement with Comcast

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary (if not budgeted please explain):

The City's franchise agreement with Comcast expired on March 4, 2018. The Illinois Level Playing Field Statute provides for renegotiation of franchise agreements after a new franchise is granted, and such was triggered with the Metronet agreement. It further requires the City to offer the same terms to Comcast that were recently approved for Metronet. Comcast and Staff negotiated a number of changes to the previous Franchise Agreement. The most significant changes are:

- 10 year franchise instead of 5 years
- Requirement to serve customers
 - Comcast no longer required to serve every property within corporate limits, similar to Metronet
 - Comcast required only to provide service to residential households, within 1,200 feet of Comcast distribution cable, where a minimum of 15 have requested service, similar to Metronet
 - Since Comcast was not the second entrant into the St. Charles marketplace, it is unclear and untested legally as to whether they are entitled to this provision, similar to Metronet
 - Staff does not expect this to be a significant issue for new developments

Staying status quo in the agreement, Comcast would not accept the overhead to underground relocation terms consistent with the Metronet agreement. Comcast desires to keep the old language, which is less firm with respect to requiring Comcast to participate in relocations off of City owned poles at their own expense.

Additionally, Comcast has never had a pole attachment agreement with the City. Comcast is a successor to previous cable franchisees, but no history of any agreement could be found. The City and Comcast negotiated a pole attachment agreement very similar to our recent agreements with Metronet and Verizon. The pole attachment agreement as presented is satisfactory to both parties.

Attachments (please list):

* Franchise Agreement * Pole Attachment Agreement

Recommendation/Suggested Action (briefly explain):

Recommendation to approve a Franchise Agreement and Pole Attachment Agreement with Comcast and Authorization for the Mayor and City Clerk to Execute both Agreements.

**CABLE TELEVISION FRANCHISE AGREEMENT
BY AND BETWEEN
The
CITY OF ST. CHARLES
And
COMCAST OF ILLINOIS/OHIO/OREGON, LLC**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of St. Charles, Illinois (hereinafter, the “City”) and Comcast of Illinois/Ohio/Oregon, LLC, (hereinafter, “Grantee”) this _____ day of _____, 2018 (the “Effective Date”).

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of the Cable Act, the Illinois Constitution of 1970, including the City’s home rule powers, and the Illinois Municipal Code, as amended from time to time, and shall be governed by the Cable Act and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

“Cable Operator” means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"Cable Service" or “Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable

Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

“City” means the City of St. Charles, Illinois or the lawful successor, transferee, designee, or assignee thereof.

“Customer” or “Subscriber” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission or successor governmental entity thereto.

“Electric Utility” means the electric service utility owned and operated by the City of St. Charles including, but not limited to, its personal and real property, buildings, fixtures, equipment, poles and all other infrastructure and improvements thereof pursuant to State of Illinois Constitutional and Statutory Authority including, but not limited to, the Municipal Ownership Act of 1913 and 65 ILCS 5/11-117-1 to 11-117-14 and 11-119-1 to 11-119-5.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean Comcast of Illinois/Ohio/Oregon, LLC.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in

accordance with generally accepted accounting principles. Cable Service revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, late fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area served by the Grantee's Cable System as of the Effective Date of this Franchise Agreement.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

"Public, Educational and Governmental (PEG) Access Channel" shall mean a video Channel designated for non-commercial use by the City, the public, and/or educational institutions such as public or private schools, but not "home schools," community colleges, and universities.

"Public, Educational and Government (PEG) Access Programming" shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

"Public Way" shall mean, pursuant and in addition to Chapter 13.22 of the City Code of Ordinances, the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. Public Way shall not include any real or personal City property that is not specifically described in this definition and shall not include City buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way. Public Way shall not include any portion of the Electric Utility regulated pursuant to Ordinance 1984-M-16.

“Qualified Household” shall mean any single family residential home where a resident has agreed in writing to Grantee’s standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Cable Service from Grantee.

“Standard Installation” means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Cable System).

“Video Programming” or “Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2: Grant of Authority

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, the Illinois Constitution, and Ordinance No. _____, the City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee’s Franchise for the provision of Cable Service.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5 Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6 Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

SECTION 3: Construction and Maintenance of the Cable System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Chapter 13.22, entitled “Construction of Utility Facilities in the Rights-of-Way” of the St. Charles City Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. As of the Effective Date, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems’ transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee’s cable and other equipment without technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Undergrounding and Beautification Projects.

3.3.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility’s exercise of authority granted under its tariff to charge consumers for the said utility’s cost of the project that are not reimbursed by the City shall not be considered to be public or private funds. The Parties acknowledge and agree that the reimbursement provisions of this section shall not apply to any action taken by the City that pertains to its ownership, operation, or management of the Electric Utility.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential household within the Franchise Area where a minimum of fifteen (15) Qualified Households have requested Cable Services within 1200 feet of the Grantee's distribution cable (e.g. a Standard Installation).

4.2.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.3. Programming. The Grantee agrees to provide cable programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Educational	Arts, Culture and Performing Arts	News & Information

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City based on a significant number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the City shall use reasonable efforts to provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or

extension of the Cable System is required, the City shall use reasonable efforts to provide or cause the developer or property owner to provide notice of the same. To the extent notices are provided, such notices shall be provided at the time of notice to all non-City utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary Basic Cable Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the City become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the City to the City on an annual basis. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.8. Customer Service Obligations. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a

representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JPMorgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the City to increase the Franchise Fee above five percent (5%), the City shall determine by adoption of an appropriate ordinance if the City should collect the additional amount. Following the determination, the City shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the City to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Cable Operator granted a Cable Franchise by the City pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the City approves the amendment by ordinance; and (c) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise

Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the City has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

SECTION 6: Transfer of Cable System or Franchise or Control of Grantee

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee’s request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition to granting of any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the

business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the City's consent thereto in the manner described in Section 6 above.

SECTION 7: Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the City certificates of insurance in accordance with Chapter 13.22 of the St. Charles City Code.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising in the course of the Grantee constructing and operating its Cable System within the City. This duty shall survive for all claims made or actions filed within one (1) year following either the expiration or earlier termination of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from any conduct for which the City, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity. The Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. The City's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. As of the Effective Date of this Agreement, the City shares (1) PEG channel with the City of Geneva, Illinois. The City may request, and Grantee shall provide, that the shared PEG Channel referenced above be split so that the City has the exclusive use of said channel upon one hundred eighty (180) days advance written notice by the City. Any cost for the activation of the split Channel shall be paid for by the City.

8.1.1 At its sole discretion, the City may request, and the Grantee shall provide, one (1) additional Government Access Channel, upon one hundred eighty (180) days advanced written notice and sufficient proof that the current Channel is inadequate for all programming

offered. “Sufficient proof” shall include a verified program log of all original, non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing Channels for the prior six month period during the times of noon to midnight. In the event that eighty percent (80%) of the programming on the Channels meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a second Channel. Any cost for the activation of the additional Channel shall be paid for by the City. The Grantee may offer the City’s entire PEG Access Programming on its basic digital tier of service.

8.2. The Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. However, the PEG Channels are, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG Channels among and between different non-commercial uses and Users. The City shall be responsible for the editorial control of the Video Programming on the PEG Channels except to the extent permitted in 47 U.S.C. §531(e).

8.3. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee’s Cable Service to receive PEG Access Programming originated from Schools and/or City facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the City determines that it wants to change or upgrade a location from which PEG Access Programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City’s plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the City to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.5. PEG Capital Support. At its sole discretion, the City may designate PEG access capital projects to be funded by the City. The City shall send written notice of the City’s desire for Grantee to collect as an external charge a PEG Capital Fee of up to thirty-five cents (\$0.35) per customer per month charge to be passed on to each Subscriber pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge over a period of twelve (12) months, unless some other period is mutually agreed upon in writing, and shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment and the Grantee shall have the opportunity to review and make recommendations upon the City’s plan prior to agreeing to collect and pay to the City the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the City shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, as long as the City spends the entire amount collected by

the end of the term of this Agreement. Moreover, if the City chooses to borrow from itself or a financial institution revenue for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the City's written request.

8.5.1. For any payments owed by Grantee in accordance with this Section 8.5 which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JPMorgan Chase & Company. or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this section.

8.5.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.6. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized PEG Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize a Channel for its own purposes. Grantee may program unused time on the Channels subject to reclamation from the City upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG Access Channel with text messaging, or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on a PEG Access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the

event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 4.8 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law; and, pursuant to Section 3.1 of this Franchise Agreement and Chapter 13.22 of the St. Charles City Code, to enforce the Grantee's compliance with the City's requirements regarding "Construction of Utility Facilities in the Rights-Of-Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the City.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado

or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174
ATTN: City Administrator

To the Grantee:

Comcast
1500 McConnor Parkway
Schaumburg, Illinois 60173
ATTN: Director of Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full

force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance or resolution by the City, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of St. Charles:

By: _____

Name: _____

Title: _____

Date: _____

**For Comcast of Illinois/Ohio/
Oregon, LLC:**

By: _____

Name: _____

Title: _____

Date: _____

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this _____ day of June, 2018 (hereinafter the “Effective Date”) by and between THE CITY OF ST. CHARLES, a municipal corporation of the State of Illinois, hereinafter referred to as “Owner”, and Comcast of Illinois/ Ohio/ Oregon, LLC, hereinafter referred to as “Licensee”.

WITNESS:

WHEREAS, the City of St. Charles and Licensee desire to establish joint use of poles owned by the City of St. Charles under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

- A. Poles. This Agreement covers all sole owned and jointly-used poles within the corporate limits as now or hereafter existing of the City of St. Charles and/or its electrical service area as such corporate limits and/or electrical service areas may be amended from time to time. This Agreement includes all electric distribution poles which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner reserves the right to exclude from joint use such poles which, in the Owner’s judgment, are necessary for its sole use. This Agreement shall not exempt the Licensee from the requirements of the Owner’s Subdivision Control Ordinance or such ordinances that relate to subdivisions.
- B. Red Gate Road Bridge. Owner agrees that Licensee may place a four-inch diameter(4”) Schedule 40 PVC Conduit, to be attached to East and West bridge abutments, and run along the entire course, of the Red Gate Road Bridge across the Fox River, between IL State Highway 31 and IL State Highway 25 (hereinafter the “Bridge”). The conduit would be placed directly underneath the road surface of the Bridge, adjacent to Owner’s existing six-inch (6”) conduits, and be supported horizontally on existing St. Charles Power Services conduit hangers. Licensee would place Comcast cable inside the conduit, which would be a part of Licensee’s network that serves St. Charles. Owner agrees that it will not charge Licensee any fees to place its facilities on the Bridge; however, a permit submittal showing the details of the attachment to the bridge shall be required prior to placement of the conduit.

Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state, or local authority with jurisdiction over City Facilities. Any joint use pole which does not conform to the most stringent standards as set forth above shall be brought to the attention of Owner by Licensee, or vice versa, as the case may be, and corrected not later than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner shall have scheduling conflicts, Owner, upon notice to the Licensee, shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee attachment is the sole cause of the non-conformity with standards, Licensee shall be responsible for the cost to bring the attachment into conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. If a dispute arises as to the costs of work related to standard conformity a meeting shall be held to discuss and resolve all issues. If the costs are unable to resolved, after good faith efforts on the part of both parties, the Licensee will have 180 days to remove its attachments.

Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
 - a. The term "Make Ready Costs" as used in this Agreement means the just and reasonable actual costs incurred performing work necessary to provide adequate space and pole strength for licensees proposed attachment per the National Electrical Safety Code (NESC), directly and exclusively associated with accommodating Licensee’s attachments, and promptly following Licensee’s written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
 - b. The term "Make Ready Estimate" as used in this Agreement means Owner’s estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B below.
 - c. The term “Make Ready Work” means all work, as determined by Owner, required to accommodate licensee’s attachments and to meet the National Electric Safety Code (“NESC”) or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in

such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) calculations as to weights of Licensee's attachments, based upon Comcast engineering studies, supporting the adequacy of the existing pole to support the attachments or the requirements for proposed changes to achieve structural adequacy,(4) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (5) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, of its Make Ready Estimate.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone and work related to City fiber on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments and transfers necessary in the communications zone on such poles, other than such work related to City fiber. Owner shall complete make ready work within 30 days. If said work will require additional time, notice shall be given to the Licensee and the Owner shall propose a revised timeline shall be provided. . Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Owner shall send to Licensee an itemized statement for the actual costs of the Make Ready Work. Owner shall provide an itemized invoice within thirty (30) days after completion of the Make Ready Work and Licensee shall pay such costs within sixty (60) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole. Owner shall provide Licensee with the estimated expenses for the new pole, transfer of services and all other costs in order to provide Licensee with the opportunity to seek alternate routes or placement of facilities.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times

perform such work within sixty (60) days of notice by the other party, Acts of God excepted. Licensee shall be responsible for the costs of pole replacements related to pole breakage due to foreign object contact with only their facilities. For example if a tree falls and makes contact only with the Licensee facilities and such causes pole breakage, the Licensee shall be responsible for the entire cost the Owner incurs to restore with no depreciation credited. Should the contact be due to negligence, for example a garbage truck or dump truck driving over allowed height catches the Licensee cable causing pole/s to break, the Owner shall replace the poles, Licensee shall reimburse Owner for costs, and Licensee shall be responsible for recovering from the negligent party

- F. Subject to resolving any safety, reliability or engineering concerns in advance, and without Licensee’s prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments or the attachments of any third party that authorizes Licensee to overlash.
- G. Without Owner’s prior written approval, Licensee may place service drops from the poles covered by this Agreement. Owner agrees that service drops are not considered compensable additional attachments after Licensee is already paying to be attached to said pole.
- H. Licensee shall place a marker/indicator identifying cable ownership near their attachment point at each pole, visible from the ground, for the purpose of positively identifying ownership during audits or emergencies. The marker should have the emergency contact phone number on it. City shall notify Licensee via telephone at the following emergency number 866-623-3732 which is staffed 24/7/365.

Section 4. Standard Space.

- A. For the purposes of this Agreement Licensee’s “standard space” shall be defined as that area of the poles reserved for Licensee’s attachments as set forth below. Note that third party attachments may already exist within the Licensee’s Standard Space. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee’s Standard Space	Point of Beginning of Standard Space from Top of Pole
35’	6’	4’	13-1/3’
40’ (1)(5)	6’	4’	20-1/3’
45’ (1)	6-1/2’	4’	20-1/3’
40’ (2)(3)	6’	4’	13-1/3’
45’ (2)(3)	6-1/2’	4’	13-1/3’

40' (4)	6'	2'	13-1/3'
---------	----	----	---------

- (1) Equipment pole for Owner.
 - (2) Non-equipment pole for Owner.
 - (3) Equipment pole for Third Party User
 - (4) Street crossing poles.
 - (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee's standard space shall commence 18-1/3 feet from the top of the pole.
- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee's standard space, shall be deemed Owner's standard space.
 - C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other's standard space, it shall so remain until the opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the other party will cooperate with the requesting party to relocate its equipment within sixty (60) days after the request. In emergency service situations, the party whose equipment must be relocated will complete such relocation as soon as practicable.
 - D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
 - E. In the event of third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other licensee's facilities and shall be on the same side of pole as other licensee's facilities, unless specifically authorized by Owner.
 - F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements

of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee at its expense, shall within 60 days, transfer its attachments to the newly-located pole.

- B. Whenever a new pole is erected solely to address Licensee requirements within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least sixty days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.
- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days, a penalty of \$50 per day shall be assessed by the Owner to the Licensee. Accrued penalty charges shall be billed by the Owner to the Licensee after the attachment is relocated, and remittance shall be due to the Owner consistent with Section 9, paragraph C.
- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within 180 days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee. In the event of emergency situations, the provisions calling for written notification may be waived, by the Director of Public Works or his delegated nominee, provided prior verbal notice is given to the Director of Public Works.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position, within reasonable distance of the original pole position, or in the position agreed upon between the Owner and the Licensee.

- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event, objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a 120 days. the Owner may, upon sixty (60) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

Section 8. Abandonment of Jointly-Used Poles.

Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.

In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice. In such event, at the sole discretion of the Owner, if Owner desires to sell said pole or poles, and if Licensee wishes to purchase them,

Licensee shall pay the Owner \$1.00 per pole. Transfer of ownership will be by means of a Bill of Sale, in the format of Exhibit C attached hereto, and shall be deemed completed when Owner has removed all Owner facilities from the pole and transmits Bill of Sale to Licensee. When bill of sale is completed, Licensee takes complete ownership and responsibility for said pole, except that Owner will be responsible for any events and occurrences relating to each pole prior to the date of sale. Owner has the right to not sell any pole and to request Licensee to remove their attachment from a pole that the Owner wishes to permanently remove. Such removal request shall be issued from Owner to Licensee with at least 180 days notice. Licensee attachments which continue to exist on such poles after 180 days notice shall be subject to the same \$50/pole/day penalty as noted in Section 5C.

Section 9. Rentals and Other Payments.

- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10th each year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of January 1 of the existing year. Unless Licensee establishes a different number within sixty (60) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a dispute, Licensee shall specifically designate, in writing, the locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental fees. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$13 per pole in the first year of this agreement. Subsequent years pole attachment fees will escalate from the \$13 per pole per year fee at a rate of 2% per year.
- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within sixty (60) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

Section 10. Defaults.

Notice of Violation or Default. In the event the City believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to

remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision

Section 12. Indemnification.

The Licensee shall indemnify, defend and hold harmless the Owner from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys

and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist.

Contractors performing work on behalf of the Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of St. Charles as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

The Owner requires the Licensee to provide and maintain insurance consistent with Exhibit D.

Section 13. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Director of Public Works
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174

and to Licensee as follows:

With a copy to:
Comcast
5N301 Medinah Rd,
Addison, IL
Attn: Director of Construction

or to such address as the parties hereto may from time to time specify.

Section 14. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the "Initial Term"), and thereafter from year to year (each year a "Renewal Term") unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial

Term or any Renewal Term. Notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Section 15. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner, which consent shall not be unreasonably withheld, except that Licensee may, without the prior consent of the Owner, assign all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate of Licensee; (ii) a purchaser of all or substantially all of Licensee's assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Licensee is participating. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. For the purposes of the Section, "Affiliate" means, any entity that controls or is controlled by Licensee, or is under common control Licensee. Nothing herein contained shall prevent or limit the right of Licensee to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger or consolidation and, in the case of the foreclosing of such mortgage or in the case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

Section 16. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

Further, the terms and conditions of this Agreement shall not apply to any pole solely owned and used by Licensee.

Section 17. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 18. Existing Contracts or Agreements.

Any existing agreements between these parties, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

Witness:

THE CITY OF ST. CHARLES

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness:

COMCAST of ILLINOIS/OHIO/ORGEON, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

POLE ATTACHMENT APPLICATION AND PERMIT

Permit No. _____

Date _____

Mr. _____

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated _____, application is hereby requested for permission to make attachments to _____ City poles as indicated on the sketch attached hereto.

By _____

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

Estimated amount to be paid for above charges \$ _____ W.O. No. _____

Rental charge for year in progress: _____ by _____ = \$ _____

No. of City Poles

Rate

Rental Charge

The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost for the work performed by the City. Applicant is responsible for the actual cost and will be issued a refund within 60 days of reconciliation of the job, if the estimated cost exceeded the actual cost. Should the actual cost exceed the estimated cost, Applicant shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable , in accordance with Section 9, Paragraph C.

Above charges accepted:

_____ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

By: _____

Date: _____

_____ APPLICANT

By: _____

Date: _____

PERPETUAL INVENTORY RECORD

City poles in use to date _____

City poles added by this permit _____

Total City poles in use _____

EXHIBIT B

NOTIFICATION OF POLE ATTACHMENT REMOVAL

Removal Notice No. _____

Date _____

Mr. _____

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

In accordance with the terms and conditions of the agreement between our respective companies dated _____, notification of removal of attachments to _____ City poles on the City of _____ as indicated on the sketch hereto is hereby given:

By _____

Date _____

Notice of Acknowledged

Date _____ City of ST. CHARLES

By _____

INVENTORY

City poles in use to date _____

City poles discontinued by this notice- _____

Total City poles in use _____

EXHIBIT C

BILL OF SALE FOR POLE

DATE: _____

COMPANY, in consideration of payment of:

\$ _____

has taken ownership of the pole/poles identified on the attached drawing.

City of St. Charles certifies that all electric utility and other licensee attachments have been removed from said pole/poles and hereby relinquishes ownership.

_____ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

By: _____

Date: _____

_____ COMPANY

By: _____

Date: _____

PERPETUAL INVENTORY RECORD

City poles in use to date _____

City poles deleted by this sale _____

Total City poles in use _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.f

Title: Recommendation to Approve Purchase Order to Sauber Manufacturing Company for Electric Line Pole/Cargo Combination Trailer

Presenter: Tom Bruhl

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: \$34,450 Budgeted Amount: \$40,000 Not Budgeted:

Executive Summary *(if not budgeted please explain):*

City Staff received one bid and two “no bids” for a specialized combination pole/cargo galvanized trailer for Electric Line.

Staff reviewed the Sauber trailer proposal and confirmed that it met all specifications.

Attachments *(please list):*

* Bid Tabulation

Recommendation/Suggested Action *(briefly explain):*

Recommendation to award Purchase Order with Sauber Manufacturing Company for an Electric Line Pole/Cargo Combination Trailer in the amount of \$34,450.

Utility Pole/Cargo Combination Trailer

Bid Tabulation

VENDOR	BID
Sauber Manufacturing Co.	\$34,450.00
Felling Trailers, Inc.	No Bid
Brooks Brothers Trailers & Equipment	No Bid



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.g

Title: Recommendation to Approve Purchase Order to Archon Construction for Electric Manhole Frame and Cover Adjustments

Presenter: Tom Bruhl

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: \$27,780 Budgeted Amount: \$30,000 Not Budgeted:

Executive Summary *(if not budgeted please explain):*

City Staff received two bids for electric manhole frame and cover adjustments. The settling manhole covers create a bump in the road for motorists and significant trouble for snow plows. The work includes saw cutting the existing pavement, repairing the underlying issue that is causing the manhole cover to settle, and then restoring the pavement.

Staff has estimated that we have six frame and covers to that we will need to adjust this year before snow operations begin this winter.

Archon has satisfactorily completed this work for the City in the past.

Attachments *(please list):*

* Bid Tabulation

Recommendation/Suggested Action *(briefly explain):*

Recommendation to award Purchase Order with Archon Construction for Electric Manhole Frame and Cover Adjustments in the amount of \$27,780.

Item	Archon Unit Cost	Electric Conduit Unit Cost	Estimated Qty	Archon Unit Cost	Electric Conduit Unit Cost
Electric Manhole - Adjust Frame and Cover	\$4,630.00	\$8,249.85	6	\$27,780.00	\$49,499.10

Item	FY18 Pricing				FY 19 Pricing			
	Three Phase Line Construction	Meade	Archon	Green Planet 21 Utility	Three Phase Line Construction	Meade	Archon	Green Planet 21 Utility
Cable Removal - Crew Day Rate	\$8,474.17	\$7,882.30	\$4,895.00	\$3,895.00	\$8,770.77	\$8,118.77	\$5,139.75	\$4,089.75
2 Weeks of Work	\$84,741.70	\$78,823.00	\$48,950.00	\$38,950.00	\$87,707.66	\$81,187.69	\$51,397.50	\$40,897.50
Year 2 Offer	3.50%	3%	5%	5.00%	3.50%	3%	5%	5.00%
Year 3 Offer	3.50%	3%	5%	11% from Year 1	3.50%	3%	5%	11% from Year 1



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.i

Title:

Recommendation to Approve Acceptance of Electric Easement at 315 S. Kirk Road

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The Electric Utility has a project to reinforce the distribution system along Kirk Road. To complete the project, an easement for a pad mounted switchgear was needed from the property owner at 315 S. Kirk Road. The City and the Owner worked collaboratively to draft the attached easement document. The City Attorney has reviewed and approved the document.

Attachments *(please list):*

* Plat of Easement

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Electric Utility Easement 315 S. Kirk Road.

This Document Prepared by:

Keith J. Wenk, Esq.
Mason, Wenk & Berman, L.L.C.
630 Dundee Road, Suite 220
Northbrook, Illinois 60062

After Recording Return to:

Keith J. Wenk, Esq.
Mason, Wenk & Berman, L.L.C.
630 Dundee Road, Suite 220
Northbrook, Illinois 60062

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE ONLY

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Agreement**”) dated April 24 2018, is made by and between **VK 315 KIRK, LLC**, an Illinois limited liability company (“**Grantor**”), and **THE CITY OF ST. CHARLES**, an Illinois municipal corporation (“**Grantee**”).

Recitals:

WHEREAS, Grantor owns that certain real property located in the City of St. Charles, County of Kane, State of Illinois, and more particularly described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

WHEREAS, subject to the terms and conditions of this Agreement, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a non-exclusive public utility easement and right-of-way upon, over, across, under and through the portion of the Land, as described on Exhibit B, attached hereto (the “**Easement Area**”), and depicted on Exhibit C, attached hereto.

Agreement:

1. Grant of Easement. Subject to the terms and conditions of this Agreement, Grantor does hereby grant, bargain and convey “as-is”, “where-is”, a non-exclusive public utility easement (the “**Easement**”) upon, over, across, under and through the Easement Area, to be maintained by Grantee as herein provided, with certain rights and privileges solely for the construction, reconstruction, restoration, maintenance, review, access and repair of public electric utility facilities including, but not limited to poles, communication equipment, cable television, service connections, and such appurtenances and additions thereto as said Grantee may deem necessary, together with the right of access thereto for the necessary personnel and equipment to do any or all of the above work provided (collectively, the “**Facilities**”), along with the right of reasonable ingress and egress upon and across the Land for access to and from the Easement Area, together with the full authority and unqualified right to trim, remove, clear, keep clear, and otherwise control (by such methods as Grantee, in its reasonable judgment, may deem necessary or proper, including but not limited to the use of herbicides) any and all trees, underbrush, or other vegetation located within the Easement Area; provided, however, that Grantee’s use of the Land for ingress and egress to and from the Easement Area shall not interfere with Grantor’s (or its tenants’) use and enjoyment of that portion of the Land not included in the Easement Area or otherwise disturb Grantor’s (or its tenants’) business operations.

Grantee accept the Easement absolutely "AS IS." Grantor makes and has made no representations or warranties, express or implied, with respect to the condition of the Easement Area or with respect to the fitness of the Easement for any purpose, and Grantee acknowledges that Grantee is not relying on and have not relied on any statement (oral or written), representation or warranty by Grantor or any representative of Grantor with respect to the Easement or the Easement Area. Grantor makes and has made no representations or warranties, express or implied, with respect to the title or ownership of the Easement Area or the Land. Notwithstanding anything to the contrary stated herein, Grantee accepts the Easement subject to all easements and servitudes (whether recorded or not) affecting the Easement Area as of the date hereof ("**Existing Easements**"), including, but not limited to, the easements described on **Exhibit D**, attached hereto.

2. **Construction of Facilities / Maintenance of Easement Area and Facilities.** Prior to installation of the Facilities, Grantee shall provide plans and specifications relating to the Facilities to Grantor for its approval, which approval shall not be unreasonably withheld or delayed. Grantee (and/or Grantee's successors and assigns) shall, at its sole cost and expense, (i) construct or cause to be constructed the Facilities in a good and workmanlike manner in accordance with the plans and specifications approved by Grantor, (ii) maintain the Facilities and the Easement Area in good condition and repair, (iii) comply with all laws in the construction, reconstruction, restoration, maintenance, review, access and repair and removal of the Facilities, (iv) secure all permits and approvals, whether from governmental entities or private parties, necessary to utilize the Easement Area in accordance with the terms herein, and Grantee shall not commence construction of the Facilities until such times as all necessary permits and approvals are secured, and (v) promptly repair or replace, at Grantee's sole cost and expense, all damage to the Easement Area or the Land, including, without limitation, fences, gates, lanes, driveways, drains and ditches damaged or destroyed by it on the Land or, at Grantor's election, pay Grantor for all damage to the Easement Area or the Land caused by Grantee.

In connection with the construction and maintenance of the Facilities, Grantee shall not permit to be created nor to remain undischarged any lien, encumbrance, or charge arising out of any work or work claim of any contractor, subcontractor, mechanic, laborer, supplier, vendor, materialman, or agent of Grantee which might be or become a lien or encumbrance or charge upon the Grantor's real or personal property. If any lien or notice of lien on account of an alleged debt of Grantee or any contractor, subcontractor, mechanic, laborer, supplier, vendor, materialman, or agent of Grantee or any notice of contract shall be filed against the Grantor's property by a party engaged by Grantee or any contractor, subcontractor, or agent of Grantee, then Grantee shall, within ten (10) days after receipt of written notice from Grantor of the filing thereof, cause the same to be discharged of record by payment, deposit, or bond. If Grantee shall fail to timely cause such lien or notice of lien to be discharged by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding, then Grantor shall be entitled, if it so elects, but without obligation to do so, to either defend any prosecution of an action for foreclosure of such lien by the lienor or to bond around or pay and discharge such lien or claim. Any money paid by Grantor and all reasonable costs and expenses, including reasonable attorneys' fees and expenses of litigation, incurred by Grantor in connection therewith, shall be paid by Grantee to such party within thirty (30) days after written demand. Grantee agrees that all costs to remove and defend such liens shall be included within Grantee's indemnity obligations set forth in Section 5 below.

3. **Reservations of Grantor's Rights.** Grantor reserves the right to use the Easement Area and other lands encumbered by this Agreement in any manner that is not inconsistent with the rights granted to Grantee hereunder. In addition to the enforcement rights of Grantor hereunder, Grantor reserves to itself and to their successors and assigns, all rights accruing from ownership of the Easement Area and the Land, including, without limitation, the right to engage in, or permit or invite others to engage in all uses of the Easement Area that are not prohibited herein and are not inconsistent with Grantee's rights hereunder.

4. **Default and Remedies.** In the event Grantee or Grantor default in the observance of any term hereunder, Grantee or Grantor, as applicable, may provide written notice of such default to the defaulting party. If within twenty (20) days after receipt of such written notice the defaulting party fails to cure, or has not begun and is not diligently pursuing such cure, the non-defaulting party shall be entitled to any remedy set forth herein and to bring an action at law or equity in a court of competent jurisdiction to enforce the terms hereunder; to require the restoration of the Easement Area to the condition required herein; to enjoin such non-compliance by ex-parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance including, if such court determines that the violating party has failed to comply with this Agreement, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In addition, in the event Grantee fails to comply with its obligations set forth herein after twenty (20) days following written notice to Grantee, Grantor shall have the right, but not the obligation, to perform such obligations on behalf of Grantee and submit an invoice to Grantee for all costs related thereto, which costs Grantee shall pay within ten (10) days of receipt thereof. The foregoing notwithstanding, in the event Grantee materially breach this Agreement, subject to the notice and cure period specified above, Grantor shall have the right to terminate this Agreement upon ten (10) days' written notice to Grantee and without additional approval from Grantee, and Grantor may unilaterally record a termination of this Agreement in the Kane County, Illinois Recorder of Deeds. In the event of such termination by Grantor, this Agreement shall be without further force or effect (except for indemnification provisions specified herein, which shall survive termination). The Easement shall be used by Grantee in accordance with the terms herein and for no other purpose whatsoever. In the event the Easement is not used and occupied in accordance with the terms, covenants, conditions and restrictions herein set forth, including, without limitation, Grantee's failure to comply with its maintenance and repair obligations set forth herein, Grantor shall have all rights and remedies specified herein and all right and remedies available at law or in equity.

5. **Limitation of Liability and Indemnity.** In no event shall Grantor be liable to Grantee or any of its employees, agents, tenants, licensees, invitees, guests or to any other persons for any injury to persons or damage to property on or about the Easement Area or caused by Grantee's use or ingress or egress to the Easement Area or by Grantee's breach of this Agreement, unless caused by the gross negligence or willful misconduct of Grantor, and Grantee shall indemnify and hold Grantor, any tenant or occupant of the Land and their employees, officers, members, directors, agents, contractors, subcontractors and employees harmless for all liabilities, costs, damages, expenses, claims, demands or judgments, including without limitation, court costs and reasonable attorneys' fees, incurred by Grantor, or any tenant or occupant of the Land in defense of any claim or action brought against Grantor, any tenant or occupant of the Land, in connection with (i) the use of the Easement, the Facilities, or the Easement Area; (ii) any act or omission of Grantee in the operation, maintenance, repair, and/or management of the Easement, Facilities, or the Easement Area; (iii) any injury to persons or property on the Land or the land adjacent to the Easement Area resulting from Grantee's failure to comply with the terms hereof; and (iv) any Existing Easement. Notwithstanding the foregoing, and to the maximum extent permitted by law, Grantee waives any statutory immunity and/or limitation of liability with respect to its indemnification obligations set forth in this paragraph. Nothing contained herein shall ever be construed to place upon Grantor any manner of liability for injury to or death of persons or for damage to or loss of property arising from or in any manner connected with the acts, conduct, negligence or omission of Grantee, or its employees, agents or contractors, in the design, construction, or maintenance of the Facilities.

6. **Insurance.** Grantee shall obtain, prior to commencing construction of the Facilities, and maintain at its sole cost and expense for the benefit of Grantor, or the then-current owner of the Land, a policy or policies of commercial general liability insurance that provide coverage in the greater of One Million and 00/100 Dollars (\$1,000,000.00) or the amount maintained by prudent private owners of property in Kane County used for similar purposes. Grantee shall cause Grantor to be named as an additional insured on

such policy or policies, and Grantee will deliver to Grantor certificates of insurance covering all contractors performing work on the Land and/or Easement Area, as applicable, establishing that such insurance is being maintained. In the event Grantee fails to obtain such insurance, or to provide Grantor reasonable proof thereof, Grantor shall have the right, but not the obligation, to obtain such insurance on Grantee's behalf and Grantee shall reimburse Grantor for the cost of such insurance within ten (10) days after receipt of an invoice therefor.

7. **Relocation of Easement Area.** Grantor shall have the right, upon not less than thirty (30) days' advance written notice to Grantee, to cause the Easement Area and any Facilities to be relocated to another area on the Land; provided, however, that (i) Grantor shall be responsible for the cost of relocating the Easement Area and any such Facilities, (ii) such new Easement Area shall be of similar size as the Easement Area, (iii) and Grantee's use of the Easement Area and the Facilities for their intended purposes shall not be materially interfered with due to such relocation. In the event the Easement Area and any Facilities are relocated as herein provided, all of the terms of this Agreement shall apply to the new Easement Area, and the parties shall promptly re-record this Agreement with a revised **Exhibit B** and **Exhibit C**, describing such new Easement Area.

8. **Miscellaneous.**

(a) The easements, benefits and burdens hereby granted shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns. Nothing herein is or shall be construed to be an express or implied grant of an easement, a right of access or a right of use to the public or to any party other than to Grantee; and this Agreement is not, and does not create, an express or implied dedication or reservation of any portion of the Land, including, without limitation the Easement Area, for public use.

(b) Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally, by first class mail, postage, prepaid, or by receipted delivery service, addressed as follows:

To Grantee:

City Administrator
City of St. Charles
2 E. Main Street
St. Charles, IL 60174

To Grantor:

VK 315 Kirk, LLC
c/o Venture One Real Estate, LLC
9500 Bryn Mawr, Suite 340
Rosemont, Illinois 60018

(c) In the event it becomes necessary for any party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover from the non-prevailing party therein, in addition to all other remedies or damages, reasonable attorneys' fees and court costs, including appellate costs, incurred in such suit.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflicts of law.

(e) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(f) This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Agreement. This Agreement may be terminated or amended only upon the express written agreement signed by the Grantor and Grantee or their respective successors-in-interest; provided, however, this Agreement and the Easement granted hereby shall terminate without further action by any of the parties hereto if the Facilities installed pursuant to this Agreement are unused for utility purposes for at least one-hundred and eighty (180) consecutive days. Upon termination of this Agreement, Grantee shall remove all Facilities from the Easement Area and restore the Easement Area to the condition that existed as of the date hereof. If Grantee fails to so remove the Facilities after sixty (60) days' written notice by Grantor, then Grantor may remove and dispose of the Facilities and demand payment therefor by Grantee, which Grantee shall pay within thirty (30) days after receipt of such demand.

(g) The person or persons executing this instrument on behalf of Grantor and Grantee each hereby represent that they have the authority to bind Grantor or Grantee, respectively, to the terms and conditions set forth herein.

(h) This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and considered to have the same binding legal effect as if it were the original signed version thereof delivered in person, and all of which shall constitute one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

GRANTOR:

VK 315 KIRK, LLC, an Illinois limited liability company

By: VK Industrial IV GP, LLC,
its manager

By: Venture One VK IV, LLC,
its manager

By: *[Signature]*
Name: Roy L. Splansky
Its: Authorized Signatory

STATE OF ILLINOIS)
) SS:
COUNTY OF ~~COOK~~ ^{hane})

I hereby certify that on this 20th day of April, 2018, before me, a Notary Public in and for the State and County aforesaid, personally appeared **Roy L. Splansky**, on behalf of **Venture One VK IV, LLC**, as manager of VK Industrial IV GP, LLC, as manager of VK 315 Kirk, LLC, an Illinois limited liability company, to be the person(s) whose name(s) is/are signed to the written instrument hereto annexed and acknowledged before in my said County that he executed the same for the purposed therein contained.



[Signature]
Notary Public

My Commission Expires: 3-2-19

GRANTEE:

THE CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____

Name: _____

Title: _____

STATE OF _____)

) SS:

COUNTY OF _____)

I hereby certify that on this _____ day of _____, 2018, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, on behalf of **THE CITY OF ST. CHARLES**, an Illinois municipal corporation, to be the person(s) whose name(s) is/are signed to the written instrument hereto annexed and acknowledged before in my said County that he/she/they executed the same for the purposed therein contained.

Notary Public

My Commission Expires: _____

EXHIBIT A

The Land

LOT 1 AND THE EAST 90.23 FEET OF LOT 2 OF UNIT NO. 2, THE "ST. CHARLES" ILLINOIS INDUSTRIAL DEVELOPMENT OF THE CENTRAL MANUFACTURING DISTRICT IN SECTIONS 25, 26, 35 AND 36, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART CONVEYED TO THE COUNTY OF KANE BY DEED RECORDED JAN. 12, 1994 AS DOCUMENT 94K004621) IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS. PARCEL A IS ALSO KNOWN AS: LOT 1, AND THAT PART OF LOT 2 LYING EAST OF THE EAST LINE OF THE FOLLOWING DESCRIBED PARCEL AS DESCRIBED IN DOCUMENT NO. 1748616: BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 2 WHICH POINT IS 90.23 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 2, MEASURED ALONG SAID SOUTH LINE, AND RUNNING THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 160.0 FEET TO A POINT WHICH IS 250.23 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 2, AS MEASURED ALONG SAID SOUTH LINE; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 2 A DISTANCE OF 450.0 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2, SAID POINT BEING 250.23 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 2, AS MEASURED ALONG SAID NORTH LINE; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 160.0 FEET; AND THENCE SOUTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 2 A DISTANCE OF 450.0 FEET TO THE POINT-OF-BEGINNING, LYING AND BEING ALL IN UNIT NO. 2 THE "ST. CHARLES" ILLINOIS INDUSTRIAL DEVELOPMENT OF THE CENTRAL MANUFACTURING DISTRICT IN SECTIONS 25, 26, 35 AND 36, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART CONVEYED TO THE COUNTY OF KANE BY DEED RECORDED JANUARY 12, 1994 AS DOCUMENT 94K004621) IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

EXHIBIT B

Easement Area

THAT PART OF LOT 1 OF UNIT 2, THE "ST. CHARLES" ILLINOIS INDUSTRIAL DEVELOPMENT OF THE CENTRAL MANUFACTURING DISTRICT IN SECTIONS 25, 26, 35, AND 36, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, THENCE NORTH 88 DEGREES 11 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 413.87 FEET TO THE WESTERLY RIGHT OF WAY OF KIRK ROAD; THENCE SOUTH 7 DEGREES 35 MINUTES 05 SECONDS WEST ALONG SAID RIGHT OF WAY, 139.15 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 81 DEGREES 51 MINUTES 12 SECONDS WEST 36.58 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 5.28 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 26.00 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS EAST 26.00 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 26.00 FEET; THENCE NORTH 00 MINUTES 00 SECONDS WEST 8.22 FEET; THENCE NORTH 81 DEGREES 51 MINUTES 12 SECONDS EAST 34.86 FEET TO SAID WESTERLY RIGHT OF WAY; THENCE NORTH 7 DEGREES 35 MINUTES 05 SECONDS EAST 12.89 FEET TO THE POINT OF BEGINNING, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

EXHIBIT C

Depiction of Easement Area

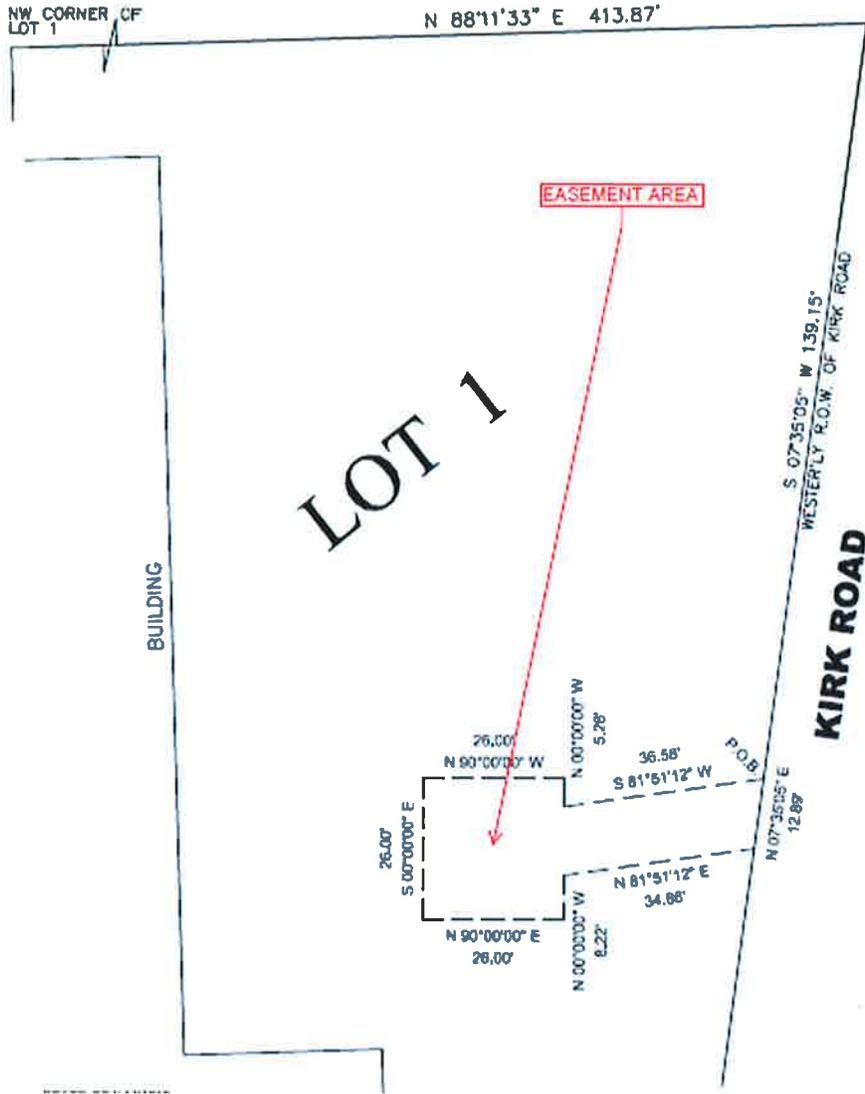


EXHIBIT D

Existing Easements

The Existing Easements include, but are not limited to, the following:

- Easements for public utility purposes as shown on plat of subdivision recorded on August 22, 1968 as document 1121431.
- Reservation of Utility Easements in the Deed from W. Wood Prince and James F. Donovan, as Trustees of Central Manufacturing District to the Prudential Insurance Company of America dated November 22, 1972 and recorded November 24, 1972 as document 1247196 for the purpose of reconstructing, extending, enlarging, altering, repairing, maintaining, renewing and operating poles, wires, cables, lines, pipes, mains, ducts, conduits, conductors and equipment and appurtenances necessary or convenient to the use of any of the same for the conveyance and transmission and distribution (via connections with the facilities aforesaid) of water, sewage, gas, steam, electricity or similar substances or utilities or any of them.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.j

Title:

Recommendation to Approve Budget Addition to the Ohio Avenue Roadway Improvement Project

Presenter:

Karen Young

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$8,271

Budgeted Amount: \$0

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The bids for the Ohio Avenue Roadway Improvement Project came in over budget. A budget addition in the amount of \$8,271 will be needed for the approval of the full contract amount.

Attachments *(please list):*

* Budget Addition Form

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve a Budget Addition for the Ohio Avenue Roadway Improvement Project in the amount of \$8,271.

BUDGET REVISION REQUEST FORM

Department: PW Engineering Date Requested: May 29, 2018

Purpose of Request/Comments (Attach additional pages if necessary)

Add funds to the Ohio Avenue FDR Water line item for the water improvements related to this project.

Equal Dollar Transfer

Amount _____

Account Numbers

From: _____ To: _____

Ref #: _____ Proj # _____ Ref #: _____ Proj # _____

Addition (or Decrease) to Department Budget

Account # 210541-56101-WA5032 Amount \$8,271

Ref #: _____ Proj # WA5032

Originator: Karen Young _____ May 29, 2017
Date

Department Head: _____
Date

Dir. Of Finance/Administration: _____
Date

For Finance Use Only
Revision entered and updated _____ Date
By: _____



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.k

Title: Recommendation to Approve Construction Contract for the Ohio Avenue Roadway Improvement Program

Presenter: Karen Young

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$943,270.56

Budgeted Amount: \$935,000.00

Not Budgeted:

Executive Summary (if not budgeted please explain):

At the February GSC meeting staff presented all of the streets that will be constructed in 2018, including Ohio Avenue. This roadway is located within the City’s east side industrial park where many of the roadways are in really poor condition. Recognizing that this is an industrial park with large volumes of trucks every day, Staff is proposing the full depth reclamation process that would achieve the same goals as roadway reconstruction, but with reduced business impacts businesses. This process was completed by the City for the first time in 2017 on 37th and 38th Avenue with great success. We were able to limit the full roadway closures down to a period of 3.5 days over a long weekend, which the businesses greatly appreciated. The proposed improvements will include the typical repairs to sidewalks and curbs, utility, pavement marking and landscape restoration. PW Engineering Staff has completed a major PR initiative with all of the businesses in this area which has led to a successful partnership to help accomplish the goals of this project and the individual business needs.

Bid Results:

On May 11, 2018, sealed bids for the Ohio Avenue Improvement Project were publicly opened and read aloud. The City received a total of five (5) bids for this project, with the results shown below.

Engineer’s Estimate	\$ 882,610.41
Geneva Construction Company	\$ 943,270.56
Johnson Paving	\$ 986,689.00
A-Lamp Concrete Contractors, Inc.	\$1,069,039.59
Plote Construction	\$1,082,045.53
Builders Paving	\$1,132,880.00

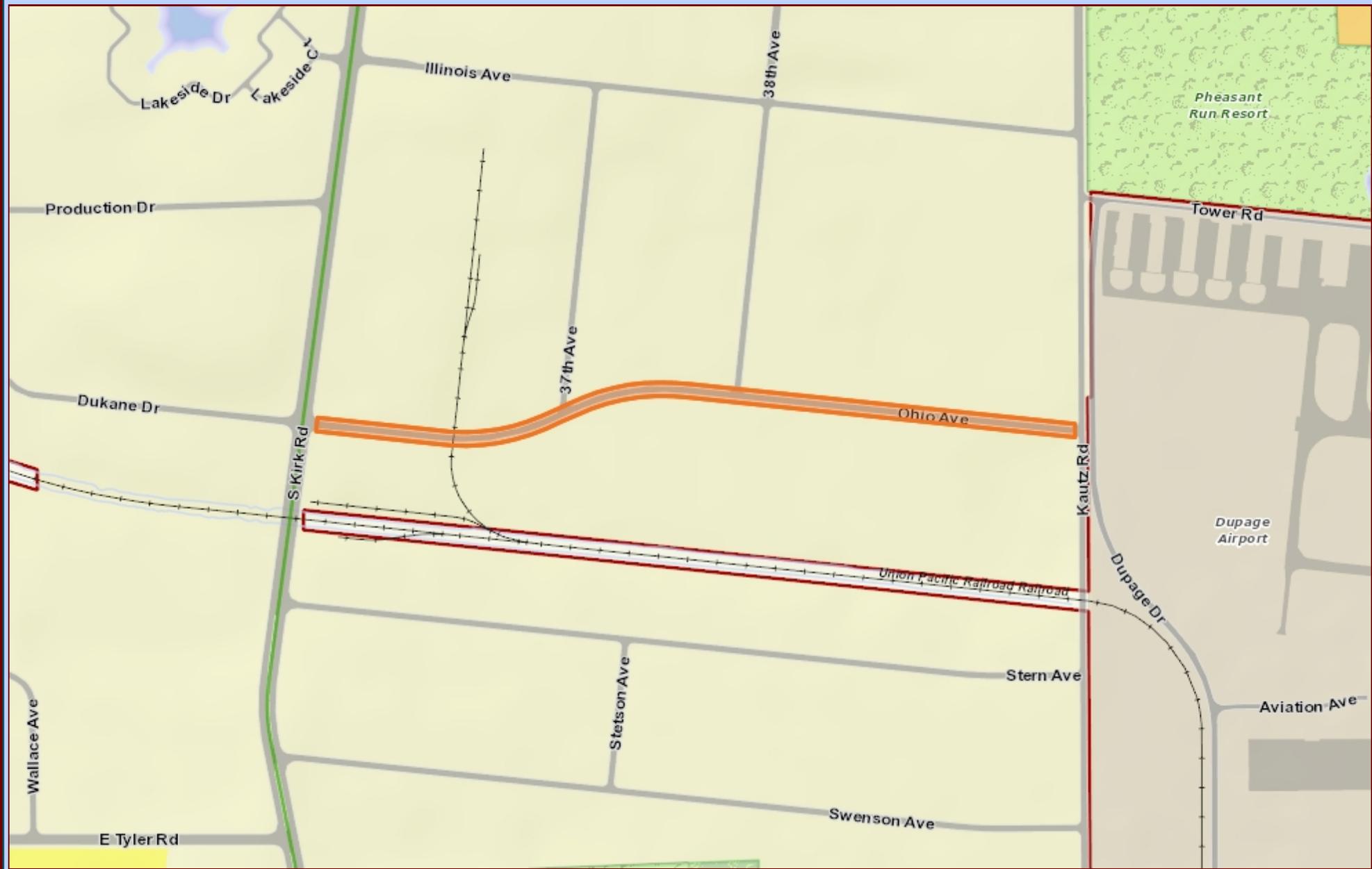
Geneva Construction Company has performed the work for the 2017 Street Program and S. Tyler Road Reconstruction and is capable of performing this work. Construction is anticipated to begin in June with substantial completion in August with restoration in September.

Attachments (please list):

* Ohio Avenue Roadway Improvement Location Map

Recommendation/Suggested Action (briefly explain):

Recommendation to Approve Construction Contract with Geneva Construction Company for the Ohio Avenue Roadway Improvement Project in the amount of \$943,270.56.



Data Source:
 City of St. Charles, Illinois
 Kane County, Illinois
 DuPage County, Illinois
 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
 Printed on: May 14, 2018 03:10 PM



Location Map

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 Powered by InRoads GIS

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.1

Title:

Recommendation to Approve a Construction Engineering Agreement for the Ohio Avenue Roadway Improvement Project

Presenter:

Karen Young

Meeting: Government Services Committee

Date: April 23, 2018

Proposed Cost: \$73,309.27

Budgeted Amount: \$92,500

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

The Ohio Avenue Improvement Project includes consultant services for Construction Engineering due to the scope of work in the industrial park area and the number of other construction projects taking place this summer. Qualifications and proposals were requested from multiple firms with three firms submitting: Baxter & Woodman, HR Green and V3.

After a review of the submittals, qualifications and reference checks, staff selected HR Green to complete the work. Their scope of work, number of hours and hourly rates are consistent with similar previous projects and meet our project timeline. HR Green's team has the appropriate experience working with residents/businesses and the proposed Full Depth Reclamation process. The City used HR Green for the construction engineering service for the 37th Avenue and 38th Avenue FDR project for the City in 2017. Both the City and the businesses were pleased with their services provided and coordination with the business owners.

The construction engineering services are a lump sum fixed fee not to exceed \$73,309.27.

Attachments *(please list):*

None

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Approve Construction Engineering Agreement with HR Green for the Ohio Avenue Roadway Improvement Project in the amount of \$73,309.27.

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.m

Title:

Recommendation to Approve a Construction Engineering Agreement for the Campton Hills Road Roadway Improvement Project

Presenter:

Karen Young

Meeting: Government Services Committee

Date: April 23, 2018

Proposed Cost: \$28,448.97

Budgeted Amount: \$35,000

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

The Campton Hills Road Resurfacing Improvement Project includes consultant services for Construction Engineering due to the scope of work and the number of other construction projects taking place this summer. Qualifications and proposals were requested from multiple firms with three firms submitting: Baxter & Woodman, HR Green and V3.

After a review of the submittals, qualifications and reference checks, staff selected HR Green to complete the work. Their scope of work, number of hours and hourly rates are consistent with similar previous projects and meet our project timeline. HR Green's team has the appropriate experience working with residents/businesses. The City used HR Green for the construction engineering service for the 37th Avenue and 38th Avenue FDR project for the City in 2017. Both the City and the businesses were pleased with their services provided and coordination with the business owners.

The construction engineering services are a lump sum fixed fee not to exceed \$28,448.97.

Attachments *(please list):*

None

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Approve Construction Engineering Agreement with HR Green for the Campton Hills Road Improvement Project in the amount of \$28,448.97.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.n

Title:

Recommendation to Approve Construction Contract for Pavement Rejuvenation

Presenter:

Karen Young

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$131,247.48

Budgeted Amount: \$140,000.00

Not Budgeted:

Executive Summary (if not budgeted please explain):

Historically the City’s street maintenance program has consisted of a limited number of strategies that attempt to address a variety of maintenance considerations on a number of different pavement types, ages and conditions. In order to maintain the longevity of our pavements and to leverage the funding available it is important to have a holistic pavement management approach that includes a combination of pavement maintenance, rehabilitation and reconstruction. Roadway pavements that are repaired when they are in good condition will cost less over their lifetime than streets that are allowed to deteriorate to a poor condition, which require resurfacing or reconstruction.

In 2017 the City is began to expand the types of pavement strategies used to maintain our roadway pavements with the understanding that it is important to choose the right treatment, for the right road and the right time. We categorized our roadway work into three categories, which are defined below:

- 1. **Preventative Maintenance** – Lower-cost treatments that are completed on newer roadways to retard the road’s deterioration, maintain or improve the condition, and extend the pavement service life. Timely preventative maintenance can be 4 to 5 times more cost effective than delaying maintenance until resurfacing is needed. Currently the City is completes the following work in this category: Bituminous Spray Patching, Permanent Bituminous Patching, Temporary Patching and pavement rejuvenation.
- 2. **Rehabilitation** – Typical grind and overlay program (2018 Street Program)
- 3. **Reconstruction** – Highest cost option where the streets are beyond preventative or rehabilitation type maintenance. Historically the City has only completed traditional reconstruction, but in 2017 introduced the Full Depth Reclamation process.

2018 Pavement Rejuvenation – In 2017 staff implemented a Pavement Rejuvenation program into to our pavement maintenance strategies, which is a spray on application that protects the roadway from weather or sun damage that can cause the pavement to become dry and brittle. Ideal roadway candidates are 0-5 years old. This application is being used by Kane County and many other local agencies. In 2017 we were able to complete streets that were resurfaced in 2014 and 2015. In 2018 Staff is proposing to complete the streets that were resurfaced in 2016 and 2017, which are shown on the attached location map.

The Pavement Rejuvenation work was bid out by Kane County earlier this year and they have a provision in their contracts to allow the local agencies to contract with their vendor at the same unit prices. Bids were received from two bidders with the unit prices for Corrective Asphalt Materials coming in at \$0.86/sy, with staff negotiating with them further and reducing the unit cost to \$0.84/sy. The second bidder was non-compliant and rejected by Kane County.

Attachments (please list):

* 2018 Pavement Rejuvenation Location Map

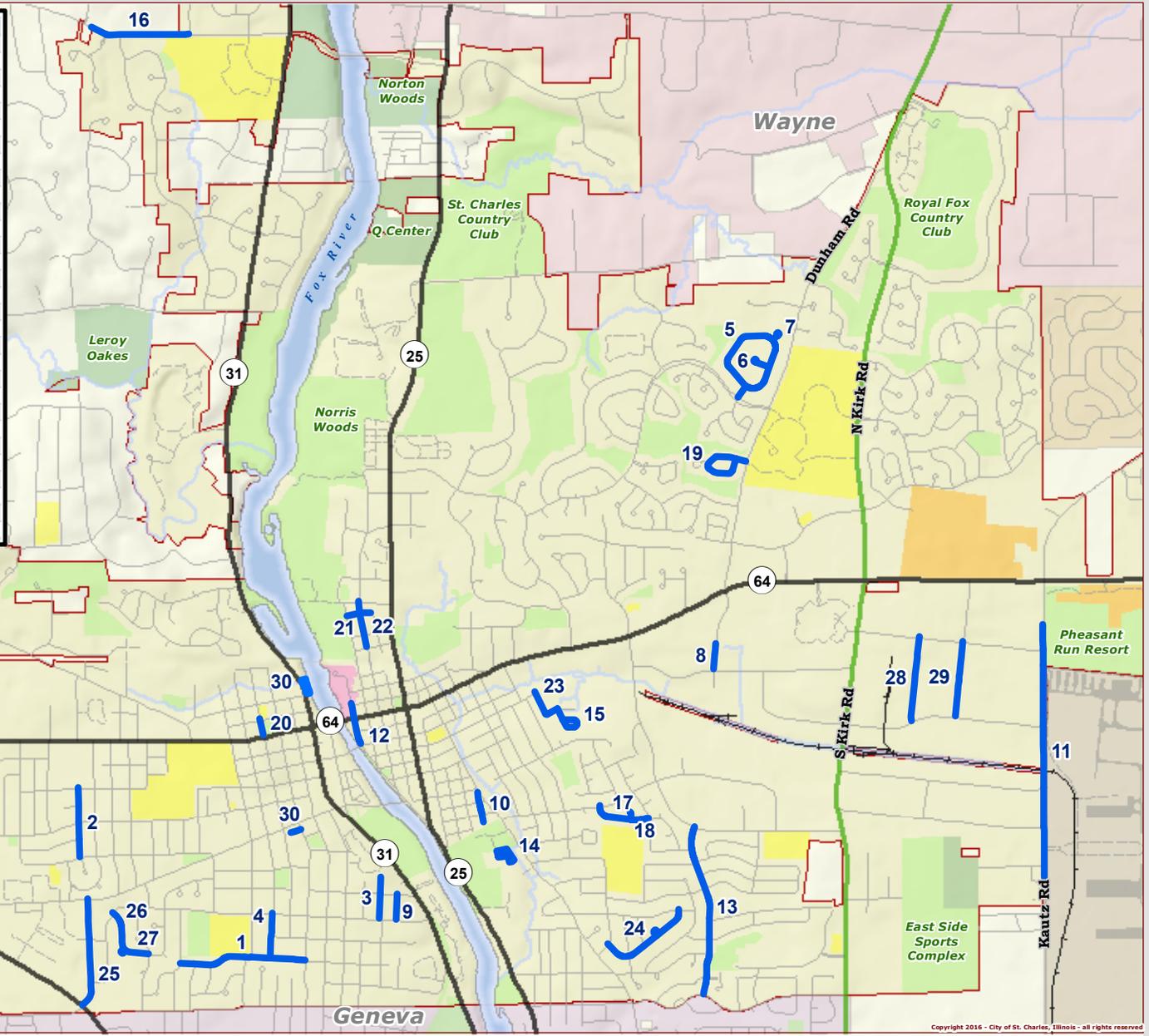
Recommendation/Suggested Action (briefly explain):

Recommendation to Approve Construction Contract with Corrective Asphalt Materials for the 2018 Pavement Rejuvenation Project in the amount of \$131,247.48.



2018 Rejuvenation Program

Map #	Location Name	Limits
1	Fellows Street	S 10th St to S 4th St
2	S 15th Street	Howard St to Indiana St
3	Ash Street	Horne St to Horne St
4	S 6th Street	Fellows St to Horne St
5	Highgate Course	Entire Road
6	Highgate Court	Highgate Course to End
7	Highgate Cul-de-sac	Highgate Course to End
8	Industrial Drive	Production Dr to 500' North
9	Pine Street	Horne St to Mosedale St
10	Van Buren Avenue	South end to north end
11	Kautz Road	City limits to Target entrance
12	Riverside Avenue	Illinois Ave to Cedar Ave
13	South Tyler Road	Division St to Tyler Rd
14	Public Work Parking Lot	Portion of parking lot
15	IDOT Garage	
16	Red Gate Road	West corp limit to Meadow View Dr
17	Banbury Avenue	Madison Ave to Independence Ave
18	Banbury Court	Banbury Ave to end
19	Dunham Place	All
20	N 5th Street	W Main St to Cedar Ave
21	Bent Avenue	N 2nd Ave to N 4th Ave
22	N 3rd Avenue	Park Ave to North Ave
23	S 14th Avenue	Indiana Ave to IDOT Garage
24	Pleasant Avenue	S 13th Ave to Jewel Ave
25	S 14th Street	Prairie St to Route 38
26	S 13th Street	Horne St To Fellows St
27	Fellows Street	S 13th St to S 12th St
28	37th Avenue	Ohio Ave to Illinois Ave
29	38th Avenue	Ohio Ave to Illinois Ave
30	4th Street Alley	4th St to the West - S of Prairie St



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Publication Date: May 16th, 2018
 Data Source: City of St. Charles, Illinois
 Base County: DuPage County, Illinois
 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
 Scale: 1:25,000



— Rejuvenation Program Locations

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AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.o

Title: Recommendation to Approve Budget Addition to the 7th Avenue Creek Project

Presenter: Karen Young

Meeting: Government Services Committee Date: May 29, 2018

Proposed Cost: \$165,000 Budgeted Amount: \$0 Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The property located at 1734 Riverside Avenue is being proposed for acquisition as part of the 7th Avenue Creek Project and possible Fox River Trail crossing improvement near Riverside Avenue and Moore Avenue. A budget addition in the amount of \$165,000 will be needed for the purchase of this property.

Attachments *(please list):*

* Budget Addition Form

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve a Budget Addition for the 7th Avenue Creek Project in the amount of \$165,000 for property acquisition.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.p

Title:

Recommendation to Approve Real Estate Purchase Agreement for 1734 Riverside Avenue

Presenter:

Karen Young

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$165,000

Budgeted Amount: \$0

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Recommendation to purchase the property located at 1734 Riverside Avenue for the purpose of the 7th Avenue Creek Project and the Fox River Trail Crossing. City ownership of this property would allow for the future improvements of the storm water conveyance in this area, the potential for modification of the 7th Avenue Creek to improve overall flood control and potential for an improved future crossing of the Fox River Tail across Riverside Avenue. This land to be used as either open space, enhancement adjacent to the 7th Avenue Creek, as deemed appropriate for future improvements in this area or subdivided for sale. This property is located within the 7th Avenue Creek project limits and the proposed Federal Emergency Management Association (FEMA) Floodplain map modifications.

The cost for the purchase of this property is \$165,000, not including closing costs. The closing costs are estimated at \$1,200 - \$1,500.

Attachments *(please list):*

* Property Location Map

Recommendation/Suggested Action *(briefly explain):*

Recommendation to approve Real Estate Agreement for 1734 Riverside Avenue to the City of St. Charles in the amount of \$165,000 with Jack McKiness (Attorney in Fact for Frances McKiness) with the Public Works Director authorized to execute all appropriate documents.



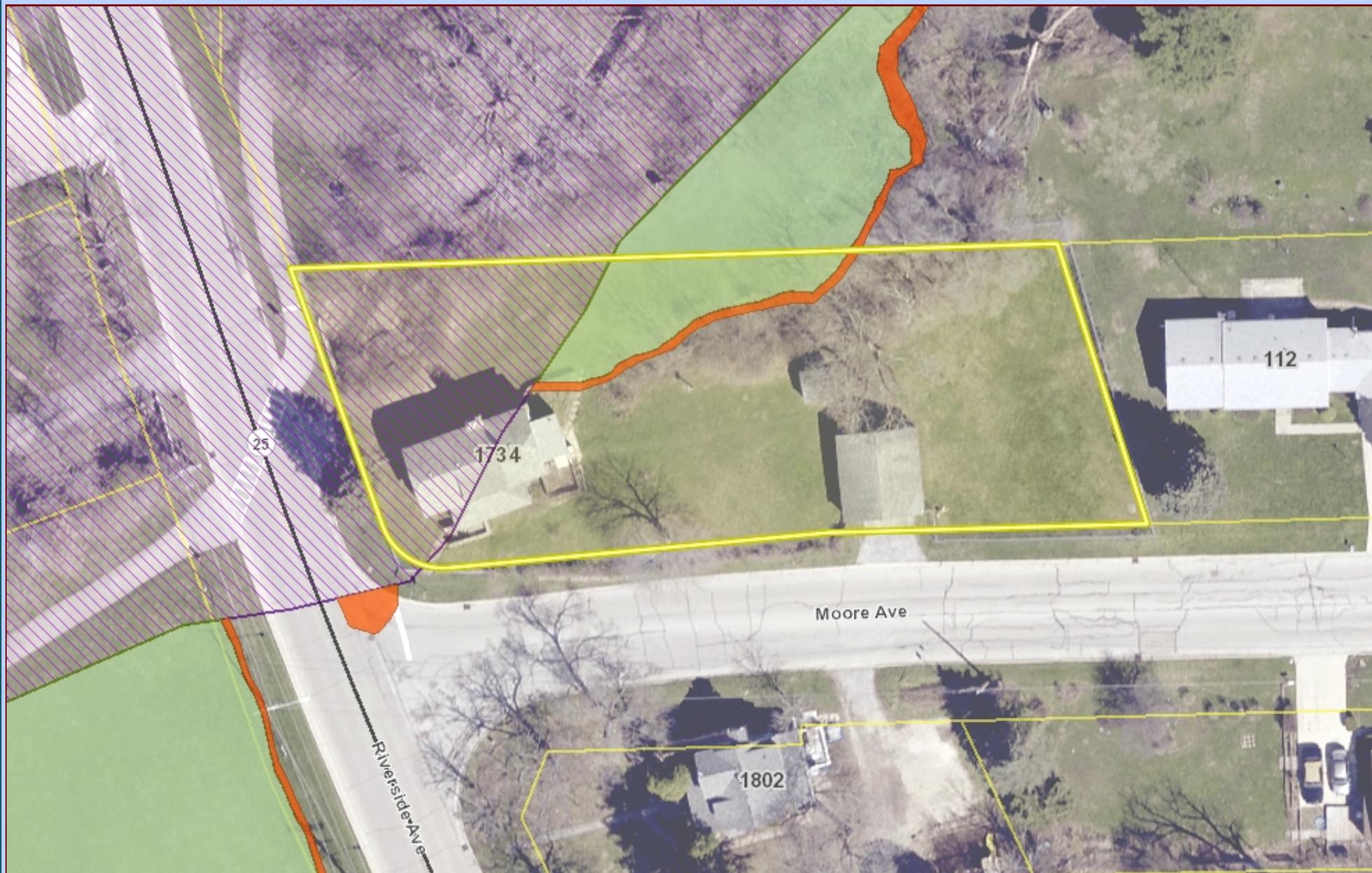
City of St. Charles, Illinois

Two East Main Street St. Charles, IL 60174-1984
Phone: 630-377-4400 Fax: 630-377-4440 - www.stcharlesil.gov

1734 Riverside Avenue

RAYMOND ROGINA *Mayor*

MARK KOENEN *City Administrator*



Data Source:
 City of St. Charles, Illinois
 Kane County, Illinois
 DuPage County, Illinois
 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
 Printed on: April 2, 2018 10:58 AM



Preliminary Flood Mapping Date: October 8, 2015
 Hatched = Floodway
 Green = 100 Year Floodplain, Orange = 500 Year Floodplain

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AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.q

Title:

Recommendation to Award the Bid for Water Treatment Salt

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: \$154,725

Budgeted Amount: \$162,400

Not Budgeted:

Executive Summary (if not budgeted please explain):

The City advertised and solicited bids for water softening salt. On April 12, 2018, the sealed bids were publicly opened and read aloud. The City received two (2) qualified bids for this project and the results were as follows:

<u>Bid Results</u>	<u>Pneumatic Delivery FY (18-19)</u>	<u>Dump Delivery FY (18-19)</u>	<u>Pneumatic Delivery FY(19-20)</u>	<u>Dump Delivery FY(19-20)</u>
Compass Minerals	\$127.00/Ton	\$127.00/Ton	\$127.00/Ton	\$127.00/Ton
Midwest Salt	\$109.75/Ton	\$102.00/Ton	\$112.75/Ton	\$105.00/Ton

The bids included unit prices for a two year contract. Two delivery methods, pneumatic or dump, are utilized due to site restrictions; therefore a unit price cost was requested for each.

Salt usage is based on water production; therefore there might be a slight variation in salt usage from year to year. Currently, the City uses an average of 725 tons of water treatment salt per year, with approximately 300 tons in pneumatic deliveries and 425 tons in dump deliveries. To safe guard the City, the proposed contract allows the total annual increase or decrease to 15% without penalty.

Based on current salt usage the estimated cost would be:

<u>Estimated Totals</u>	<u>Pneumatic Delivery Estimated 300 Tons</u>	<u>Dump Delivery Estimated 425 Tons</u>	<u>Estimated 2 Year Total</u>
FY 18 – 19	\$32,925	\$43,350	\$154,725
FY 19 – 20	\$33,825	\$44,625	

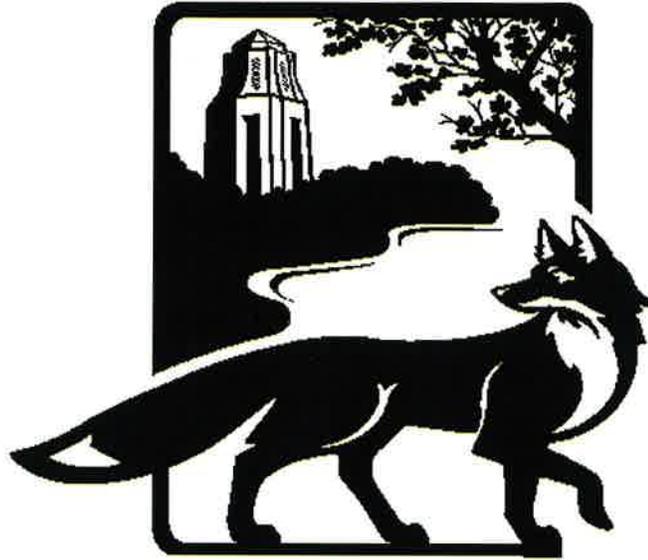
Attachments (please list):

* Midwest Salt Proposal

Recommendation/Suggested Action (briefly explain):

Recommendation to award a two-year contract to Midwest Salt for water treatment salt based on the unit prices provided in the bid.

CITY OF ST. CHARLES, ILLINOIS



ST. CHARLES
S I N C E 1 8 3 4

Request for Bids:

Environmental Services Water Treatment Salt

April 12, 2018

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SECTION I: WATER TREATMENT SALT

The City of St. Charles is requesting invitation to bid on our water treatment chemicals the duration of the 2018/2019 fiscal year, ending April 30, 2019. The City is also requesting rates for an optional second year (May 1, 2019 – April 30, 2020) this option will be exercised at the sole discretion of the City. All work will be contracted on a materials basis.

Bids for Treatment Chemicals, as described in the accompanying technical scope, shall be received before **2:00 PM Thursday, April 12, 2018** at the City of St. Charles City Hall, 2 East Main Street, St. Charles, IL 60174, Council Chambers, Attention: Purchasing Manager. Bids will be read aloud at this time. Any bids received subsequent to the time specified will be promptly returned to the Contractor unopened.

Proposals shall be in a sealed envelope labeled with “Sealed Bid –Treatment Salt”.

Any questions shall be submitted to Tim Wilson via e-mail to the following e-mail addresses:

twilson@stcharlesil.gov

Upon receipt of questions prior to April 5, 2018, the Contractor shall receive a reply e-mail acknowledging the receipt of the question. Response to the question shall be as soon as practical. Should the question result in a clarification that requires addenda, such addenda will be issued via website update as soon as practical.

Questions submitted after 3PM, April 5, 2018 shall not be acknowledged or answered. Contractors shall take all necessary steps to propose questions prior to April 1st.

City reserves the right to extend the due date. Should an extension be necessary, communication of such shall be e-mailed to all registered Contractors.

Scope

The objective of purchasing water softening grade sodium chloride is to allow the Public Works Department, Water Division to reliably maintain an existing service. The salt is used in the regeneration process of water softening. All chemicals are required to be suitable for the production of potable water specification AWWA B200. The request for proposal is seeking a single source supplier with the capability of supplying, and transporting salt.

Locations of Delivery Sites:

Well 3/4: 250 N. Riverside Ave

Well 8: 454 S. 37th Ave

General Conditions

The City estimates of chemical usage are not to be construed as an annual guaranteed quantity and are to be used as a guideline only. Contractor should have minimal five years' experience in

providing drinking water and waste water treatment chemicals. The contractor is required to follow all OSHA, IDL, EPA and DOT chemical handling and transportation requirements. The work schedule shall be coordinated by the City and the successful bidder. All work shall be completed and invoiced by April 30 of each contract year.

Salt Quantity - This salt purchase will provide for the complete water softening salt needs of the City for the contract period. The anticipated rate of purchase shall be 25 tons per order for the contract period, with an anticipated quantity of 750 tons to be purchased.

Delivery Time- The Deliveries may not start before 7:30 AM weekdays, and must be completed for the day by 2:30 PM weekdays. Additional hours must be approved 24-hours in advance to coordinate city staffing. Note that the contractor may be restricted with respect to work hours each day depending on special events in the area. Weekend hours must be approved by the City in advanced, and generally will not be permitted.

Delivery Requirements – All Deliveries are free on board destination point. The destination point will be the city’s bulk storage tank(s). The contractor will be responsible for safe transportation and delivery of all orders. All deliveries are to be made within three (3) business days of the order placed or as extended by written approval of City Management. Delivery performance shall be subjected to state herein.

- a. Ordering timeline: For an order placed prior to 9:00 A.M. on a given day, that day would be considered as the first calendar day of the three (3) business day delivery period. For an order placed after 9:00 am on a given day, the day following would be considered as the first calendar day of the two (3) day delivery period.
- b. Liquidated Damages: If the vender is unable to make delivery within the authorized delivery time of three (3) business days the City shall assess and have the right to retain as liquidated damages, not as penalty, of 5 percent per day on the undelivered portion of the order. If after seven days assessment of liquidated damages claims, a vender has still failed to deliver as required, the City reserves the right to immediately, and without notice to vender, take action to remedy vender failure. This may include the termination of the order and purchase chemicals from other sources, or other action to ensure operational status.
- c. Deliver Methods :
 - i. The chemical supply company is required to utilize semi-trucks. Due to site conditions the city requires two methods of delivery.
 1. Controlled pneumatic delivery
 2. Controlled dump delivery
 - ii. All delivery trucks will be required to access on-site locations requiring the backing of trucks.

Delivery Charges: There shall be no additional costs charged to the city for multiple drop sites per chemical order by the supplier. There shall be no added charges for fuel used by the supplier.

Receipt of order: All signed receipts of order should digitally collect and will need to be email to the Inventory control within 24 hour of order acceptance.

Submittal of Bids:

Submittals can either be mailed or hand delivered to:

Mike Shortall
Inventory Control Division Manager
City of St. Charles
2 E. Main St. St. Charles Illinois, 60174

Bids must be submitted on or before:

April 12, 2018 2:00 P.M

Questions concern this request for bids should be directed in email or phone call to:
Tim Wilson at: twilson@stcharlesil.gov or 630-377-4405

SECTION II: INFORMATION TO BIDDERS

1. GENERAL CONDITIONS:

- A. Bids shall be submitted in a sealed envelope, inserted in a larger sealed envelope. Both envelopes shall be clearly marked with the word "Bid," and the name of the project or subject of the Bid. (Sec. 2.33.200A of the St. Charles Municipal Code). The outer envelope shall be addressed "Purchasing Manager, City of St. Charles, Two East Main Street, St. Charles, IL 60174 and include the Project Name." Include a return address on both envelopes. Bids received after the specified time and date will be returned unopened. Bids shall be on City of St. Charles Bid form and shall be returned attached to the original specification sheets. Copies are not acceptable. All Bids submitted are binding for sixty (60) calendar days following the date of the Bid opening
- B. All Bid proposals must be signed with the firm name and by an authorized officer or employee of the company. One Bid per Bidder is allowed.
- C. The award of Bids shall be made, after determination of the successful Bidder by the City Council, by issuance of a City purchase order from the City of St. Charles Purchasing Manager and/or the Purchasing Manager's designee to the successful Bidder.
- D. The City of St. Charles reserves the right to waive minor specification deviations and reject any or all Bids, and to accept the Bid, which is in the opinion of the City Council, the lowest conforming Bid from a responsible Bidder as defined by state law and Sec. 2.33.230 of the St. Charles Municipal Code.

- E. All Bids must be Bid on the basis of delivery to the City's Inventory and Purchasing Division, 200 Devereaux Way in St. Charles, IL. The price shall be stated in units and Bids made on each item separately. In case of conflict, the unit price shall govern. The City reserves the right to award the Bid in aggregate or on individual items.
- F. All taxes, storage, handling and delivery costs incurred prior to receipt of the material by the City must be assumed by the successful Bidder.
- G. All taxes, storage, handling and delivery costs incurred prior to receipt of the material by the City must be assumed by the successful Bidder.

The City of St. Charles is exempt from paying Illinois Use Tax, Illinois Retailers Occupation Tax, Federal Excise Tax, and Municipal Retailer's Occupation Tax.

The Illinois Department of Revenue tax exempt form can be obtained through the City of St. Charles Office of Purchasing.

The winning Bidder will be required to complete the requested information included on this form. It is the purpose of this document to allow the winning Bidder to purchase items for the Bid project, tax free. It is the intent that the contractor will include the savings into the bid or Bid.

Contractors will be responsible for utilizing this tax exempt form in a legal and responsible way. The contractor must sign a certification that the tax exempt form will be solely used for the purpose stated above. Abuse of the City's tax exempt status to avoid sales tax liability on other contractor purchases shall not be tolerated and may disqualify the contractor from being awarded future City contracts or business.

- H. ~~If applicable, material is to be delivered on a flatbed trailer and ready to be unloaded from the side of the trailer without driving a forklift onto the trailer. Advance notice of 48 hours is required by calling 630-377-4421. Deliveries can be made to the City between the hours of 7:00 a.m. - noon and 12:30 p.m. - 3:30 p.m.~~
- I. Each Bidder shall make an accurate statement in the proposal of the smallest number of calendar days in which delivery can be made after placement of the order.
- J. Any firm bidding this/these unit(s) must have a full service shop which includes parts and service mechanics capable of making any adjustments or repairs as may be required. The firm must also have service truck capabilities.
- K. Materials will be paid within 30 days of receipt/acceptance of same and receipt of invoice, or if a discount is allowed and is advantageous to the City, within five (5)

days of receipt/acceptance of same and receipt of the invoice. Bids will be evaluated on both thirty (30) day and discount pricing.

REQUIRED _____ NOT REQUIRED _____ x _____

L. Travel time (incl. on-site repairs and/or pickup and delivery) is included within the labor or service warranty.

REQUIRED _____ NOT REQUIRED _____ x _____

2. **MATERIALS:**

Only new, unused, first quality material and/or equipment shall be offered by the Bidder.

3. **BID RESULTS:**

Bid results may be available on the City's website, www.stcharlesil.gov, once they are tabulated or approved. In the alternative, the Bidder may supply a self-addressed, stamped envelope for obtaining Bid results. NO Bid results will be given by telephone.

4. **ADDENDUM**

Any interpretation of the specifications or other changes may be made available on the City's web page under the "Bid & Proposals" page. It is the responsibility of the Bidder to check periodically with the web page on updates and addendums.

5. **BID DEPOSIT**

A 10% Bid deposit (certified check, cashier's check, or bank draft) or Bid bond is required to accompany this Bid. Failure to do so will eliminate the Bid.

REQUIRED _____ NOT REQUIRED _____ x _____

6. **PERFORMANCE & PAYMENT BONDS**

A performance bond in the amount of 100% of the Bid submitted is required within ten (10) calendar days of acceptance of the Bidder's proposal by the City.

The performance bond of the successful Bidder shall have a minimum "A" rating as defined in Best's Key Rating Guide, be conditioned on the faithful performance of the requirements of the contract, and shall have as surety a corporate surety authorized to act as such in Illinois. The performance and payment bonds shall cover payment for all labor and material, and insure completion of the project. The Bidder will be responsible for all claims for injuries to persons or damages to property or premises arising out of or in connection with his or her operations prior to the acceptance of the finished work or supplies, and that he or she will promptly make payments to all persons supplying him or her or them with labor or materials in the prosecution of the work provided for in the contract; and shall guarantee to indemnify and save the City and its officers and employees harmless from all costs, damages, and expenses arising out of or by reason of the Bidder's failure to comply and perform the work and complete the contract in accordance with the specifications.

The performance and payment bonds shall be in conformance with the requirements of the Illinois Act in relation to bonds of Bidders entering into contracts for public construction. (Illinois Compiled Statutes Ch. 30, Sec. 550/1, et seq.)

REQUIRED _____ **NOT REQUIRED** _____ **x** _____

7. GENERAL GUARANTY

The Bidder agrees to (a) hold the City, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented, invention, article, or appliance furnished or used in the performance of the contract in which the bidder is not the patentee, assignee, licensee, or owner; (b) protect the City against latent defective material or workmanship and to repair or replace any damages or marring occurring in transit or delivery; (c) pay for all permits, licenses, and fees and give all notices and comply with all laws, ordinances, and rules of the City and State of Illinois; (d) indemnify City against all claims for personal injury, death, and/or property damage arising out of the project.

8. ASSIGNMENT

Assignment of this contract or any part thereof, or any funds to be received thereunder by the Bidder shall be subject to the approval of the City of St. Charles.

9. DEFAULT

The contract may be cancelled or annulled by the Purchasing Manager in whole or in part by written or electronic (Email) notice of default to the Bidder upon nonperformance or violation of contract terms. An award may be made to the next lowest Bidder, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Bidder (or his surety) shall be liable to the City for costs to the City in excess of the defaulted contract prices. The Bidder shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the Bidder to deliver materials or services within the time stipulated on his or her Bid, unless extended in writing by the purchasing manager, shall constitute contract default.

10. INSURANCE

Detailed insurance requirements are included under City of St. Charles Certificate of Insurance Requirements.

The Bidder **shall** secure and maintain in effect at all times, at his or her expense, insurance of the following kinds and limits to cover all locations of the Bidder's operations in connection with work on his or her company's projects, naming the City of St. Charles as an additional insured. The Bidder shall furnish Certificates of Insurance to the City Finance Department Purchasing Office before starting construction or within 10 days after the execution of the contract, whichever date is reached first. All insurance policies shall include a non-cancellation clause provision preventing cancellation without 30 days written prior notice to the City. In case of insurance cancellation, bidder shall

- A. Such records are true and accurate;
- B. The hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and
- C. The Bidder or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

The City of St. Charles is required to keep the certification records submitted for a period of not less than five years. Furthermore, these records, except an employee's address, telephone number, and social security number, shall be made available in accordance with the Freedom of Information Act.

REQUIRED _____ NOT REQUIRED X

14. EXECUTION OF CONTRACT, INSURANCE, & PERFORMANCE & PAYMENT BONDS

The successful Bidder, within ten (10) business days after acceptance of the Bidder's offer by the City, shall execute all requested contract documents, supply satisfactory evidence of required insurance, and furnish a satisfactory performance and payment bonds when required by the bid documents. In the event that the Bidder fails to furnish required documents, insurance, and performance and payment bonds within ten (10) business days after acceptance of the Bidder's offer by the City, then the City's acceptance of the offer shall automatically terminate, and the Bid deposit of the bidder shall be retained by the City as reimbursement for administrative costs.

15. RELEASE OF BID DEPOSITS

Within a reasonable time after the Bid opening, Bid deposits of all except the three lowest responsible Bidders will be released. The remaining deposits will be released after the successful bidder has executed the contract documents and furnished evidence of the insurance and bonds required by the Bid documents.

16. EQUAL OPPORTUNITY EMPLOYER

The City of St. Charles is an equal opportunity employer, and all Bidders are required to be equal opportunity bidders as defined by all applicable state and federal laws and regulations.

17. VETERANS PREFERENCE

The City of St. Charles, per Illinois Compiled Statutes Ch. 330, par. 55/1-55/3, gives preference to veterans for public works contracts, should a tie Bid arise between local OR non-local Bidders.

18. CERTIFICATE OF NON-DISQUALIFICATION

All Bidders are required to submit a completed Certificate of Non-Disqualification (attached), as required under Illinois Compiled Statutes, Ch. 720, Sec. 33 E-11.

19. PROVISIONS OF ST. CHARLES MUNICIPAL CODE

All Bids and contracts shall be in accordance with Title 2, Ch. 2.33 of the City of St. Charles Illinois Municipal code, as from time to time amended, which shall take precedence over and control all aspects of this contract, and which are incorporated herein by reference.

20. SURVIVAL

The provisions hereof shall survive and shall not merge with the resulting purchase order or contract awarded to the successful bidder, but shall be additional terms thereof; and the submission of a bid shall be deemed as acceptance of these terms.

21. CERTIFICATE OF COMPLIANCE WITH SAFETY STANDARDS

All Bidders are required to submit a completed Certificate of Compliance with Safety Standards (attached).

22. CERTIFICATE OF COMPLIANCE WITH PUBLIC ACT 87-1257 OF THE ILLINOIS HUMAN RIGHTS ACT

All Bidders are required to submit a completed Certificate of Compliance with Public Act 87-1257 of the Illinois Human Rights Act (attached).

23. WAIVERS OF MECHANICS LIEN

- A. With each application for payment, submit waivers of mechanics liens from the Bidder, subcontractors, and suppliers for the construction period covered by the current application. Payment will not be released until the Bidder has supplied the City with the waiver of liens.
 - 1. Submit partial waivers on each item for the amount requested, prior to deduction for retainage, on each item.
 - 2. When an application shows completion of an item, submit final or full waivers.
 - 3. The City reserves the right to designate which entries involved in the work must submit waivers.
 - 4. Waiver Delays: submit each application for payment with the Bidder's waiver of mechanics lien for the period of construction covered by the application.
- B. Initial application for payment: administrative actions and submittals, that must precede or coincide with submittal of the first application for payment, include the following:
 - 1. List of subcontractors.
 - 2. List of principal suppliers and fabricators.
 - 3. Schedule of values.

REQUIRED _____ NOT REQUIRED _____ X _____

JH/mh

CERTIFICATE OF COMPLIANCE WITH SAFETY STANDARDS

The undersigned, upon being first duly sworn, hereby certifies to the City of St. Charles, Kane and DuPage Counties, Illinois, that MIDWEST SALT, LLC (Bidder) shall comply with all local, state and federal safety standards.

MIDWEST SALT, LLC
Name of Bidder

By: [Signature]

State of Illinois,
County of Cook) ss.

Subscribed and sworn to before me this 11th day of April, 2018.

Carol T. Adams
Notary Public



**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACT 87-1257
OF THE ILLINOIS HUMAN RIGHTS ACT**

The undersigned, upon being first duly sworn, hereby certifies to the City of St. Charles, Kane and DuPage Counties, Illinois, that MIDWEST SALT, LLC
_____ (bidder) complies with the Illinois Human Rights Act as amended by Section 2-105, Public Act 87-1257 in relation to employment and human rights.

MIDWEST SALT, LLC
Name of Bidder

By: 

State of Illinois),
County of Cook) ss.

Subscribed and sworn to
before me this 11th day
of April, 2018.

Carol T Adams
Notary Public



CERTIFICATE OF COMPLIANCE WITH PREVAILING WAGE RATE ACT

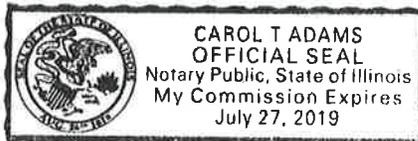
The undersigned, upon being first duly sworn, hereby certifies to the City of St. Charles, Kane and DuPage Counties, Illinois, that all work under this contract shall comply with the Illinois Prevailing Wage Act, 820 ILCS 130/.01, et. seq, (the "Act") and current City ordinance, to the extent required by law. Contractors shall submit monthly certified payroll records to the City.

MIDWEST SALT, LLC
Name of Contractor
By: [Signature]

State of Illinois,
County of Cook) ss.

Subscribed and sworn to
before me this 11th day
of April, 2018.

Carol T. Adams
Notary Public



/cjb
Bidders Section II



City of St. Charles Certificate of Insurance Requirements

The Vendor/Contractor shall be required to carry and evidence insurance coverage with a standard Acord Certificate of Insurance with minimum limits applicable. Sample attached.

1. Minimum Insurance Requirements and Limits

<i>Coverage</i>		<i>Limits</i>
A. Automobile Liability	\$1,000,000	Combined single limit
B. Commercial General Liability	\$1,000,000	Per occurrence
	\$2,000,000	General aggregate

All Commercial General Liability policies must include Blanket Contractual coverage and Broad Form Vendors' Liability coverage.

C. Workers' Compensation	\$500,000	Per accident
(Employers' Liability)	\$500,000	Disease limit
	\$500,000	Each Disease
D. Umbrella Liability	\$5,000,000	Limit. Cyber
(If Applicable)	\$1,000,000	Limit
F. Professional Liability (If Applicable)	\$1,000,000	Limit

2. Cancellation or Alteration

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. Workers' Compensation and General Liability Waiver of Subrogation in favor of the City from their carrier.

4. Insurance Certificates

- A. Must be submitted ten (10) days prior to any work being performed to allow review of certificates.
- B. Certificates not meeting requirements must be revised and resubmitted within fifteen (15) days or the subcontractor will not be allowed on the jobsite.

5. Additional Insured and Broad Form Vendors' Liability in favor of the City.

The City must be named as an Additional Insured with the following wording appearing on the Certificate of Insurance: "The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City), shall be named as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed. This coverage will apply on a primary and noncontributory basis."

6. Minimum Insurance Carrier

All contractors, manufacturers/distributors, and suppliers' insurance carriers must comply with the minimum A.M Best rating of A-VI for all insurance carriers.

REFERENCES

All bidders are required to furnish three (3) current references for clients who presently are

using their services. Firm: CITY OF CRYSTAL LAKE

Address: 100 W. WOODSTOCK

CRYSTAL LAKE IL 60014
 City State Zip

Phone: 815-356-3700 x 4041 Area Code
ANDY RESEK

Firm: VILLAGE OF MONTGOMERY

Address: 200 N. RIVER STREET

MONTGOMERY IL 60538
 City State Zip

Phone: 630-688-5443 Area Code JACK ROSENSTIEL

Firm: VILLAGE OF SUGAR GROVE

Address: 10 S. MUNICIPAL DRIVE

SUGAR GROVE IL 60554
 City State Zip

Phone: 630-461-4761 Area Code CHRIS LEMKE
630-391-7230 PUBLIC WORK OFFICE.

SECTION III: AWWA B200-17 SPECIFICATIONS

Supply & Logistics. *Let Midwest Salt Handle It.*

Bulk Industrial Salt



NSF Certified



B200-07 & B200-12

We provide our customers with high quality salt, competitive prices, and deliver consistently within a few days from receiving our customer's order. We control our own salt supply and we have the largest network of bulk carriers in the industry ensuring that you can count on us for where and when you need your salt delivered.



Industrial Crystal Salt

- 98.7% Pure Salt
- Meets All **AWWA** Requirements
- Certified Production To **NSF** Standards
- Ships From Multiple Locations = Shortage Resistant
- We Supply Numerous Municipalities In Illinois



Industrial Evaporated Salt

- 99.92% Pure Salt
- Meets All **AWWA** Requirements
- Certified Production To **NSF** Standards
- Ships From Multiple Locations = Shortage Resistant
- Washed, Filtered, Dried & Quality Tested

Don't Need A Bulk Salt Truckload? Try Our 1,000lb or 2,000lb SuperSacks



Packaged Pellet & Solar Crystal

- Pellets- 99.8% Pure Salt
- Solar- 99.1% Pure Salt
- Meets All **AWWA** Requirements
- Certified Production To **NSF** Standards (ANSI-60)

WE HAVE THE RIGHT DELIVERY CAPABILITY FOR ANY SITE REQUIREMENT.



Conveyor

Works with elevated and inground tanks. Reduced dust.



Pneumatic

Great for raised or hard to reach brine tanks.



Controlled Flow

Best solution for in-ground tanks. Very fast unload.



Flatbed

For packaged deliveries, forklift service available.

Product Data Sheet

MVP- Bulk Southern Coarse Water Conditioning Salt 986CM

Product Description

Rock salt produced by blasting and direct mining methods. MVP- Bulk Southern Coarse Water Conditioning Salt 986CM is manufactured in compliance with **American Water Works Association Standard B200** and is **NSF Certified**.

Stockpiles

Romeoville, IL

Physical Properties

YPS added- No
Bulk Density- 1.03-1.28 g/ml (64-80 lb/ft³)
Typical PH Range- 6.5-7.5



Chemical Analysis

Component	Typical	Range
Sodium Chloride (%) ¹	98.6	≥96.7
Calcium Sulfate (%)	1.13	≤3.00
Ca & Mg as Ca (%)	.34	≤1.5
Water Insolubles (%)	0.03	≤0.20
Moisture Surface (%)	0.01	≤1.50
Free Iron (ppm)	3	<10

¹By difference of impurities, dry weight basis (ASTM method)

Sieve Analysis

U.S.S Mesh	Typical Retained	Typical Passing	Range Passing
3/8	0%	100%	≤8%
#4	40%	58%	
#8	50%	10%	
#12	7%	3%	≤30%
Pan	3%	0%	



Water Conditioning Salt References

Village of Pingree Grove
14N042 Reinking Road
Pingree Grove, IL 60140
Pat Doherty
Phone: 224-535-1335
Email: pdoherty@pingreegrove.org

Village of Cary
454 Cary Woods Circle
Cary, IL 60013
John Stein
Phone 847-639-0003
Email: jstein@caryillinois.com

Village of Minooka
121 E. McEvelly
Minooka, IL 60447
Ryan Anderson
Phone: 815-467-8868
Email: ryan.anderson@minooka.com

Citco
135th Street and new Avenue
Lemont, IL 60439
Vic Lenzi
Phone: 630-561-4952

City of Rensselaer
820 E Walnut
Rensselaer, IN 47978
Chris Murphy
219-866-2310

Village of Shorewood
1 Town Center Road
Shorewood, IL 60404
Bill Cerney
Phone: 815-955-1801
Email: BCerney@vil.shorewood.il.us

Village of Sugar Grove
601 Heartland Drive
Sugar Grove, IL 60554
Chris Lemke
Phone: 630-466-7508
Email: clemke@sugar-grove.il.us

City of DeKalb
1216 Market Street
DeKalb, IL 60115
Bryan Faivre
Phone: 815-748-2050
bfavre@cityofdekalb.com

Village of Diamond
1750 E Division Street
Diamond, IL 60416
Jeff James
Phone: 815- 634-8149

City of Crystal Lake
100 W. Woodstock Street
Crystal Lake, IL 60014
Andrew Resek
Phone: 815-356-3700 x4041



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.r

Title:

Recommendation to Award Proposal for Environmental Services SCADA Phase #1 Hardware

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: May 28, 2018

Proposed Cost: \$259,965.74

Budgeted Amount: \$356,000

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The City of St. Charles Environmental Services Division was seeking a Supervisory Control and Data Acquisition (SCADA) operating system equipment provider. City staff and our consulting firm, Concentric Integration LLC, obtained hardware proposals through a RFP in March 2018. The proposals received were from two firms, Revere Electrical Supply Co. and WESCO International.

Both firms provided equal hardware options and operating systems. The Public Works Environmental Services staff determined that both hardware suppliers provided equal proposals.

Pricing for the Phase #1 SCADA hardware and supporting systems were as follows:

WESCO: \$247,586.42

Revere Electrical Supply: \$315,982.32

In addition to the quote the City will be receiving a five-year equipment warranty at the cost of \$12,379.32.

As part of the SCADA project, Concentric Integration LLC is responsible for a turnkey product. The recommendation will be for Concentric Integration to move forward with the purchase of Phase #1 hardware equipment with a five year warranty from WESCO International.

Attachments *(please list):*

* WESCO Proposal

Recommendation/Suggested Action *(briefly explain):*

Recommendation to award Proposal to Concentric Integration for SCADA Phase #1 hardware purchase in the amount of \$259,965.74.



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.s

Title: Recommendation to Award the Proposal for Construction Engineering 7th and Division Avenue Lift Station Replacement

Presenter: Tim Wilson

Meeting: Government Services Committee Date: May 28, 2018

Proposed Cost: \$41,000 Budgeted Amount: \$36,700 Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The 7th & Division Lift Station was originally constructed in 1974 with a wet well/dry well configuration. Since its construction, the dry well has been converted to a second wet well with submersible pumps. The design life for this type of lift station is twenty-five years. This station has now reached the end of its life and is in need of replacement.

The lift station serves approximately 250 services. The service area is generally bound by Moore Avenue on the north, Division Street on the south, 7th Avenue on the west and Kirk Road on the east. A project location map is attached.

Funding for the lift station replacement was approved with the Phosphorus and Digester construction EPA low-interest loan. As part of the loan application process, the EPA has pre-approved the funding for this project.

In March, the City approved the design phase of this the 7th and Division Lift Station to Trotter and Associates after completing a RFQ/P. The City received four responses for the project. The proposals submitted were equal in scope of work and met all the criteria of the project timeline.

Trotter and Associates	\$41,000
EEI	\$51,300
Ruekert – Mielke	No Proposal
CMT	No Proposal

Upon review, Trotter and Associates submitted the lowest proposal for the design and construction oversight. In addition, they have completed similar projects in comparable communities making them qualified for the project.

Attachments *(please list):*

* Trotter and Associates Proposal * Project Location Map

Recommendation/Suggested Action *(briefly explain):*

Recommendation is to Award the Proposal for Bid and Construction Engineering 7th & Division Avenue Lift Station Replacement to Trotter and Associates not to exceed amount of \$41,000.



May 15, 2018

Honorable Raymond Rogina
Mayor of St. Charles
City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174

Re: 7th & Division Lift Station Replacement Project
Professional Services Agreement – Bidding and Construction

Dear Mayor Rogina:

We sincerely appreciate this opportunity to offer our services. Enclosed for your review is the construction engineering services agreement for the referenced project. Please contact us if there are any questions or changes to the listed scope of services. If you would like to proceed with the contract, please sign and return one copy of the agreement.

Sincerely,

TROTTER & ASSOCIATES, INC.

Jerry Ruth, P.E.
Project Engineer

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May 15, 2018

Honorable Raymond Rogina
Mayor of St. Charles
City of St. Charles
2 E. Main Street
St. Charles, Illinois 60174

Re: 7th & Division Lift Station Replacement Project
Professional Services Letter Agreement and Exhibits

Dear Mayor Rogina,

Trotter and Associates, Inc. (ENGINEER) is pleased to provide professional services to the City of St. Charles, IL (CLIENT) for the 7th & Division Lift Station Replacement Project (hereinafter referred to as the "PROJECT").

Project Background

In 2015, Trotter and Associates, Inc. completed a Facility Plan which included a summary of the City's wastewater infrastructure, including the sixteen lift stations. The 2015 Facility Plan Update identified four of the City's lift stations for rehabilitation or replacement due to condition and age. The City has chosen to address two of the four over the next five fiscal years (FY): 7th & Division Lift Station and Country Club Lift Station.

The 7th & Division Lift Station was originally constructed in 1974 with a wet well/dry well configuration. Since its construction, the dry well has been converted to a second wet well with submersible pumps. 7th & Division Lift Station has the ability to bypass flow.

The lift station serves approximately 500 PE. The service area is generally bound by Moore Avenue on the north, Division Street on the south, 7th Avenue on the west and Kirk Road on the east. A project location map is included as Appendix A. The force main discharges at the intersection of 7th Avenue and Moore Avenue and is tributary to Riverside Lift Station.

The design life for lift stations of this type is twenty-five years. The lift station was rehabilitated in 2007 and included the installation a new pre-cast concrete lids, pumps, flow meter, controls, generator, and transfer switch. The pumps have been replaced twice, in 2009 and 2014. In addition to unusually short service life of the pumps, ragging and grease are a problem at this station. The control panel is in poor condition, as it is old and deteriorating.



Table 1: 7th & Division Lift Station – Existing Pump and Force Main Data

Number of Pumps	Pump Manuf. & Type	Pump Motor (HP)	Pump Rated Capacity (GPM)	Force Main Dia. (inch)	Rated TDH (feet)	Installation Date
2	Gorman-Rupp Submersible	4	220	6	35	2014

Project Understanding

The proposed improvements include replacement of the lift station with a single wet well, a valve vault and a meter/bypass connection vault. The pump capacity will be increased to 300 gpm per City request. Vehicle access to the station will be improved and the control systems will be upgraded. The lift station will be integrated into the City's SCADA system.

Project Schedule

The City and TAI are currently in the final design / permitting phase. Based on submitting for IEPA permit to construct by the end of May 2018, we anticipate receiving this permit and advertising for bids at the end of August 2018. Construction is scheduled to commence in January of 2019 and completed in August of 2019.

Scope of Services

Our services will consist of customary civil engineering and surveying services and related engineering services incidental thereto, described as follows;

1. Preliminary Engineering Report – Completed
2. Preparation of IEPA Low Interest Loan Application – Completed
3. Preliminary Design Phase – Completed
4. Final Design Phase – Completed
5. Bidding and Negotiating Phase – 56 Hours
 - a. Prepare for review and approval by City, contract agreement forms, general conditions and supplemental general conditions, bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents.
 - b. Attend a pre-bid meeting with City and prospective bidders.
 - c. Respond to questions about bid documents. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 - d. Attend bid opening, prepare bid tabulation, and assist the City in reviewing the bids, participate in any negotiations or clarification discussion and awarding contracts.
 - e. Furnish and supply drawings and project specification copies as required.

BIDDING

MANPOWER ESTIMATE AND FEE SUMMARY

TASK	QC	PM	PE	EIT	CAD	PLS	SC	TOTAL MANHOURS
Prepare forms		8						8
Attend pre-bid meeting	2	4						6
Respond to questions and issue addenda	2	12			12			26
Attend bid opening, review, recommend award	1	3						4
Furnish drawings and specifications		8	4					12
TOTAL - PRELIMINARY DESIGN	5	35	4	0	12	0	0	56

*QC = Scott Trotter; PM = Jerry Ruth; PE = Jillian Kiss; EIT = Ben Steele; CAD = Gary Cooper or Mike Davison; PLS = James McKenzie, SC = John Pfortmiller

6. Construction Phase – 244 Hours

Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall

- a. Consult with the City and act as the City's representative during execution of construction.
 - i. Resident Project Representative (RPR). Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth at the end of this Exhibit A. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement. If additional field services are required and authorized by the City Administration, Trotter and Associates shall be compensated for the additional services. Visits to Site and Observation of Construction. In connection with observations of Contractor's work in progress while it is in progress:
 1. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.
 2. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions

and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- ii. Assist the City in the selection of an independent testing laboratory to perform all necessary testing and inspections required during construction.
 - iii. Make additional visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as and experienced and qualified design professional the progress and quality of the Work.
- b. Project coordination and management:
- i. Prepare and participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 - ii. Recommend to the City, if necessary, that Contractor's work be disapproved and rejected while it is in progress.
 - iii. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work.
 - iv. Recommend Change Orders and Work Change Directives to the City, as appropriate, and prepare Change Orders and Work Change Directives as required.
 - v. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
 - vi. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
 - vii. Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents.
 - viii. Provide weekly reports to City staff on status of construction, hours spent on site.
 - ix. Schedule and conduct construction meetings every other week during construction phase.
- c. As appropriate, establish baselines and benchmarks for locating the work, which in Engineer's judgment are necessary to enable Contractor to proceed.
- d. Prepare to the City Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

CONSTRUCTION
MANPOWER ESTIMATE AND FEE SUMMARY

TASK	QC	PM	PE	EIT	CAD	PLS	SC	TOTAL MANHOURS
Act as City's representative during construction				96				96
Project coordination and management	4	54	4	52			2	116
Establish baselines and benchmarks							8	8
Prepare record drawings		4		4	8	4	4	24
TOTAL - PRELIMINARY DESIGN	4	58	4	152	8	4	14	244

*QC = Scott Trotter; PM = Jerry Ruth; PE = Jillian Kiss; EIT = Ben Steele; CAD = Gary Cooper or Mike Davison; PLS = James McKenzie, SC = John Pfortmiller

7. Contractor's Completion Documents – Not Included

Changes to the scope of services outlined in this agreement shall be authorized through execution of an Exhibit D - Contract Addendum.

Compensation

An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit B. The total compensation for services is estimated to be \$41,000.00 based on the following assumed distribution of compensation:

Bidding Phase	\$8,500
<u>Construction Phase</u>	<u>\$32,500</u>
	Not to Exceed: \$41,000

ENGINEER may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by CLIENT. The total estimated compensation for ENGINEER's services included in the breakdown by phases incorporates all labor, overhead, profit, and ENGINEER's Consultant's charges.

The amounts billed for ENGINEER's services will be based on the cumulative hours charged to the PROJECT during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually as of January 1st to reflect equitable changes in the compensation payable to ENGINEER.

Reimbursable Expenses. OWNER should budget \$1,000 for Reimbursable Expenses, including printing, plotting and shipping required for the completion of the work. Actual expenses will be compensated for based on actual cost as a pass-through without mark-up.

Miscellaneous

This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written representations. This agreement may not be changed, modified, or amended except in writing signed by both parties. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.

ENGINEER may have portions of the Services performed by its affiliated entities or their employees, in which event ENGINEER shall be responsible for such services and CLIENT shall look solely to ENGINEER as if ENGINEER performed the Services. In no case shall CLIENT'S approval of any subcontract relieve ENGINEER of any of its obligations under this Agreement. However, ENGINEER is not responsible whatsoever for any obligations its subcontractors might have to its employees, including but not limited to proper compensation of its employees.

In the event CLIENT uses a purchase order form or other CLIENT developed document to administer this Agreement, the use of such documents shall be for the CLIENT's convenience only, and any provisions, terms or conditions within the CLIENT developed document shall be deemed stricken, null and void. Any provisions, terms or conditions which the CLIENT would like to reserve shall be added to Exhibit C – Supplemental Conditions and agreed to by both parties.

ENGINEER acknowledges that this project and the scope of work performed thereto will require ENGINEER and all lower tiered subcontractors of ENGINEER to comply with all obligations under and pursuant to the any applicable local, state and/or federal prevailing wage laws (e.g. Davis-Bacon Act, Illinois Prevailing Wage Act, etc.), including but not limited to all wage, notice and/or record keeping requirements to the extent applicable, necessitated and required by law.

If during negotiations or discussion with a Client it becomes clear that Client has determined prevailing wages are not applicable to the work performed by Trotter & Associates, it is best to confirm that understanding in writing with appropriate indemnification language.

Contents of Agreement

This Letter Agreement and the Exhibits attached hereto and incorporated herein, represent the entire understanding with respect to the Project and may only be modified in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CLIENT:

Trotter and Associates, Inc.:

By: _____

By: _____

Title: _____

Title: _____

Effective Date: _____

Date Signed: _____

Address for giving notices:

Address for giving notices:
40W201 Wasco Road, Suite D
St. Charles, IL 60175

Designated Representative

Designated Representative

Jerry Ruth

Title:

Title: Project Engineer

Phone Number:

Phone Number: (630) 587-0470

Facsimile Number:

Facsimile Number: (630) 587-0475

E-Mail Address:

E-Mail Address: j.ruth@trotter-inc.com

ATTACHMENTS:

EXHIBIT A – STANDARD TERMS AND CONDITIONS

EXHIBIT B – SCHEDULE OF HOURLY RATES AND REIMBURSIBLE EXPENSES

EXHIBIT C – SUPPLEMENTAL GENERAL CONDITIONS

EXHIBIT D – CONTRACT ADDENDUM

CLIENT Initial _____

TAI Initial _____



CLIENT Initial _____

TAI Initial _____

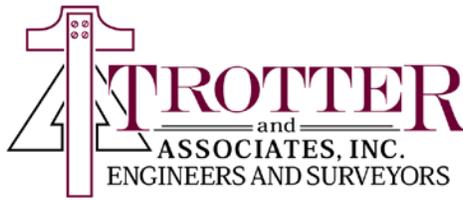


EXHIBIT A - STANDARD TERMS AND CONDITIONS

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ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Professional Services set forth herein and in the Letter Agreement.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Services.

ARTICLE 2 - CLIENT'S RESPONSIBILITIES

2.01 General

A. Provide ENGINEER with all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications; and furnish copies of CLIENT's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Exhibit D - Addendum of the Agreement as required.

- F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CLIENT deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as CLIENT requires, Contractor raises, or ENGINEER reasonably requests.
 - 3. Such auditing services as CLIENT requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by CLIENT to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to ENGINEER data as to CLIENT's anticipated costs for services to be provided by others for CLIENT so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. If CLIENT designates a manager or an individual or entity other than, or in addition to, ENGINEER to represent CLIENT at the Site, the duties, responsibilities, and limitations of authority of such other party shall be disclosed to the ENGINEER and coordinated in relation to the duties, responsibilities, and authority of ENGINEER.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of CLIENT, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as CLIENT determines necessary to verify:
 - 1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
 - 2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs 2.01.O and P.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CLIENT has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

- A. If CLIENT fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement.
- B. If ENGINEER's services are delayed or suspended in whole or in part by CLIENT, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

- A. *For Basic Services.* CLIENT shall pay ENGINEER for Basic Services performed or furnished under as outlined in the Letter Agreement
- B. *For Additional Services.* CLIENT shall pay ENGINEER for Additional Services performed or furnished as outlined in Exhibit D.
- C. *For Reimbursable Expenses.* CLIENT shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit B.

4.02 Other Provisions Concerning Payments

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to CLIENT by ENGINEER, unless otherwise agreed.
- B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If CLIENT fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to CLIENT, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. *Payments Upon Termination.*
 - 1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice CLIENT and will be paid in accordance with Exhibit B for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
 - 2. In the event of termination by CLIENT for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice CLIENT and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit B.
- E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon CLIENT's timely request, copies of such records will be made available to CLIENT at cost.

- F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs shall be invoiced to and paid by CLIENT as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If CLIENT wishes greater assurance as to probable Construction Cost, CLIENT shall employ an independent cost estimator.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between CLIENT and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit C - Supplemental General Conditions.

5.03 Opinions of Total Project Costs

- A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CLIENT shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CLIENT-furnished information.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as CLIENT's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services.

ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

- D. ENGINEER and CLIENT shall comply with applicable Laws or Regulations and CLIENT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CLIENT's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- E. CLIENT shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. CLIENT shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.
- G. Prior to the commencement of the Construction Phase, CLIENT shall notify ENGINEER of any other notice or certification that ENGINEER will be requested to provide to CLIENT or third parties in connection with the Project. CLIENT and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and CLIENT shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.
- H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. CLIENT agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.
- I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by CLIENT without consultation and advice of ENGINEER.
- L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions.

6.02 Authorized Project Representatives

- A. Contemporaneous with the execution of this Agreement, ENGINEER and CLIENT shall designate specific individuals to act as ENGINEER's and CLIENT's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of CLIENT under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

- A. Should CLIENT provide Construction Phase services with either CLIENT's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in the Letter Agreement.
- B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by CLIENT, then CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

- A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- B. Copies of CLIENT-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by CLIENT to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.
- E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating

systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

- F. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates as defined in Exhibit B.

6.05 Insurance

- A. ENGINEER shall procure and maintain insurance as set forth below:
 - 1. Workers Compensation & Employer's Liability
 - a. Each Occurrence: \$1,000,000
 - 2. General Liability
 - a. Each Occurrence: \$1,000,000
 - b. General Aggregate: \$2,000,000
 - 3. Excess or Umbrella Liability
 - a. Each Occurrence: \$5,000,000
 - b. General Aggregate: \$5,000,000
 - 4. Automobile Liability
 - a. Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$1,000,000
 - 5. Professional Liability
 - a. Each Occurrence: \$2,000,000
 - b. General Aggregate: \$2,000,000
- B. CLIENT shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by CLIENT which are applicable to the Project.
- C. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project
- D. CLIENT and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverage.
- E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

- F. At any time, CLIENT may request that ENGINEER, at CLIENT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective. If so requested by CLIENT, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by CLIENT.

6.06 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
1. *For cause,*
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By ENGINEER:
 - 1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by CLIENT to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
 - 3) ENGINEER shall have no liability to CLIENT on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. *For convenience,*
 - a. By CLIENT effective upon the receipt of notice by ENGINEER.
- B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.08 Successors, Assigns, and Beneficiaries

- A. CLIENT and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of CLIENT and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of

such other party, in respect of all covenants, agreements and obligations of this Agreement.

- B. Neither CLIENT nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CLIENT or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and ENGINEER and not for the benefit of any other party. The CLIENT agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

- A. CLIENT and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.
- B. If and to the extent that CLIENT and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit C, "Supplemental Conditions."

6.10 Hazardous Environmental Condition

- A. CLIENT represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. CLIENT has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.
- C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify CLIENT and, to the extent of applicable Laws and Regulations, appropriate governmental officials.
- D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. CLIENT acknowledges that ENGINEER is performing professional services for CLIENT and that ENGINEER is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER’s activities under this Agreement.
- F. If ENGINEER’s services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER’s terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT’s officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER’s officers, directors, partners, employees, and ENGINEER’s Consultants in the performance and furnishing of ENGINEER’s services under this Agreement.
2. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER’s officers, directors, partners, employees, and ENGINEER’s Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT’s officers, directors, partners, employees, and CLIENT’s consultants with respect to this Agreement or the Project.
3. To the fullest extent permitted by law, ENGINEER’s total liability to CLIENT and anyone claiming by, through, or under CLIENT for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER’s negligence bears to the total negligence of CLIENT, ENGINEER, and all other negligent entities and individuals.
4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER’s Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate CLIENT to indemnify any individual or entity

from and against the consequences of that individual’s or entity’s own negligence or willful misconduct.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by CLIENT and ENGINEER in Exhibit C, “Supplemental Conditions,” if any.

6.12 Notices

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

- A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

- A. The headings used in this Agreement are for general reference only and do not have special significance.

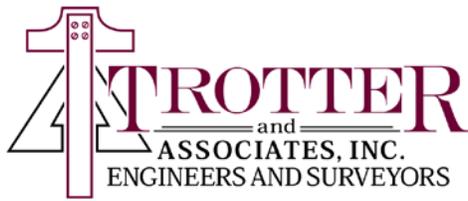
6.16 Definitions

- A. Defined terms will be in accordance with EJCDC No. 1910-1 (1996 Edition)

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CLIENT Initial _____

TAI Initial _____



**EXHIBIT B
SCHEDULE OF HOURLY RATES AND REIMBURSABLE EXPENSES**

2018 Schedule of Hourly Rates		2018 Reimbursable Expenses		
Classification	Billing Rate	Item	Unit	Unit Price
Principal	\$224.00	Engineering Copies 1- 249 Sq. Ft.	Sq. Ft.	\$0.29
Senior Project Manager	\$219.00	Engineering Copies 250-999 Sq. Ft.	Sq. Ft.	\$0.27
Project Manager	\$193.00	Engineering Copies 1000-3999 Sq. Ft.	Sq. Ft.	\$0.25
Professional Land Surveyor	\$183.00	Engineering Copies 3999 Sq. Ft. & Up	Sq. Ft.	\$0.23
Project Coordinator	\$183.00	Mylar Engineering Copies up to 24" by 36"	Each	\$8.00
Senior Project Engineer	\$183.00	Color Presentation Grade Large Format Print	Sq. Ft.	\$5.15
Engineer Level IV	\$169.00	Comb Binding > 120 Sheets	Each	\$4.75
Engineer Level III	\$153.00	Comb Binding < 120 Sheets	Each	\$3.50
Engineer Level II	\$133.00	Binding Strips (Engineering Plans)	Each	\$1.00
Engineer Level I	\$112.00	5 Mil Laminating	Each	\$1.25
Engineering Intern	\$52.00	Copy 11" x 17" - Color	Each	\$0.50
Senior Technician	\$155.00	Copy 11" x 17" - Black and White	Each	\$0.25
Technician Level IV	\$138.00	Copy 8.5" x 11" - Color	Each	\$0.25
Technician Level III	\$125.00	Copy 8.5" x 11" - Black and White	Each	\$0.12
Technician Level II	\$109.00	Recorded Documents	Each	\$25.00
Technician Level I	\$98.00	Plat Research	Time and Material	
Clerical Level II	\$76.00	Per Diem	Each Day	\$30.00
Clerical Level I	\$64.00	Field / Survey Truck	Each Day	\$45.00
Survey Crew Chief	\$155.00	Postage and Freight		Cost
Survey Technician Level II	\$79.00	Mileage	Per Mile	Federal Rate
Survey Technician Level I	\$66.00			
Prevailing Wage Survey Foreman**	\$185.00			
Prevailing Wage Survey Worker**	\$181.00			
Sub Consultants	Cost Plus 5%			

***Rates will be escalated for Overtime & Holiday Pay to adjust for Premium Time based on the current Illinois Department of Labor Rules*

Note: On January 1st of each year, the fees and hourly rates may be escalated by an amount not to exceed five (5) percent.

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CLIENT Initial _____

TAI Initial _____

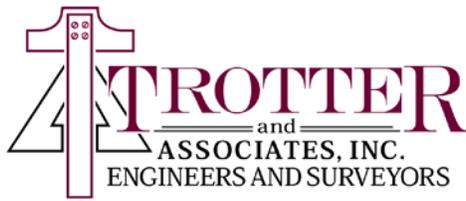


EXHIBIT C SUPPLEMENTAL CONDITIONS

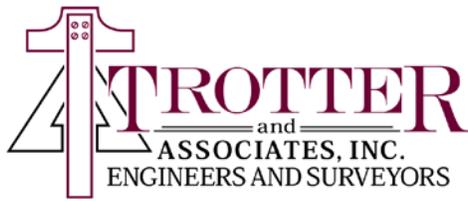
Engineer hereby agrees to incorporate and accept the following provisions to be included in the aforementioned Agreement at no additional compensation:

- A. The Engineer agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction and services in accordance with the Clean Water Loan Program rules as required by the award conditions of USEPA's Assistance Agreement with the IEPA. The Engineer acknowledges that the fair share percentages are 5% for MBE's and 12% for WBE's.
- B. The Engineer shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Engineer shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.
- C. Audit and access to records clause:
 - 1. Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - 2. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
 - 3. All information and reports resulting from access to records pursuant to the above section C.1 shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, or the audited parties.
 - 4. Records under the above section C.1 shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes) of Illinois Administrative Code, Title 35, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- D. Covenant Against Contingent Fees:

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

CLIENT Initial _____

TAI Initial _____



- E. Article 6.09.B of Exhibit A Standard Terms and Conditions shall be replaced in its entirety with the following – “If and to the extent that CLIENT and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in the provisions of the Kane County Circuit Court.”

CLIENT Initial _____

TAI Initial _____



**EXHIBIT D
CONTRACT ADDENDUM**

Project Name: 7th & Division Lift Station Replacement

Project No. STC-112

Addendum No. _____

This is an addendum attached to, made part of and incorporated by reference into the Agreement between CLIENT and ENGINEER for modification of scope and compensation for the PROJECT. All other terms and conditions of the original Agreement between CLIENT and ENGINEER are unchanged by this Contract Addendum and shall remain in full force and effect and shall govern the obligations of both CLIENT and ENGINEER, including obligations created by this Contract Addendum.

The contract modifications are described below:

- 1.
- 2.
- 3.

CONTRACT SUMMARY

Original Contract Amount \$ _____

Changes Prior to This Change \$ _____

Amount of This Change \$ _____

Revised Contract Amount: \$ _____

For purposes of expediency, ENGINEER and CLIENT agree that an executed electronic version of this Contract Addendum shall suffice. The original of this Contract Addendum shall be returned to ENGINEER after execution.

CLIENT:

ENGINEER:

CITY OF ST. CHARLES

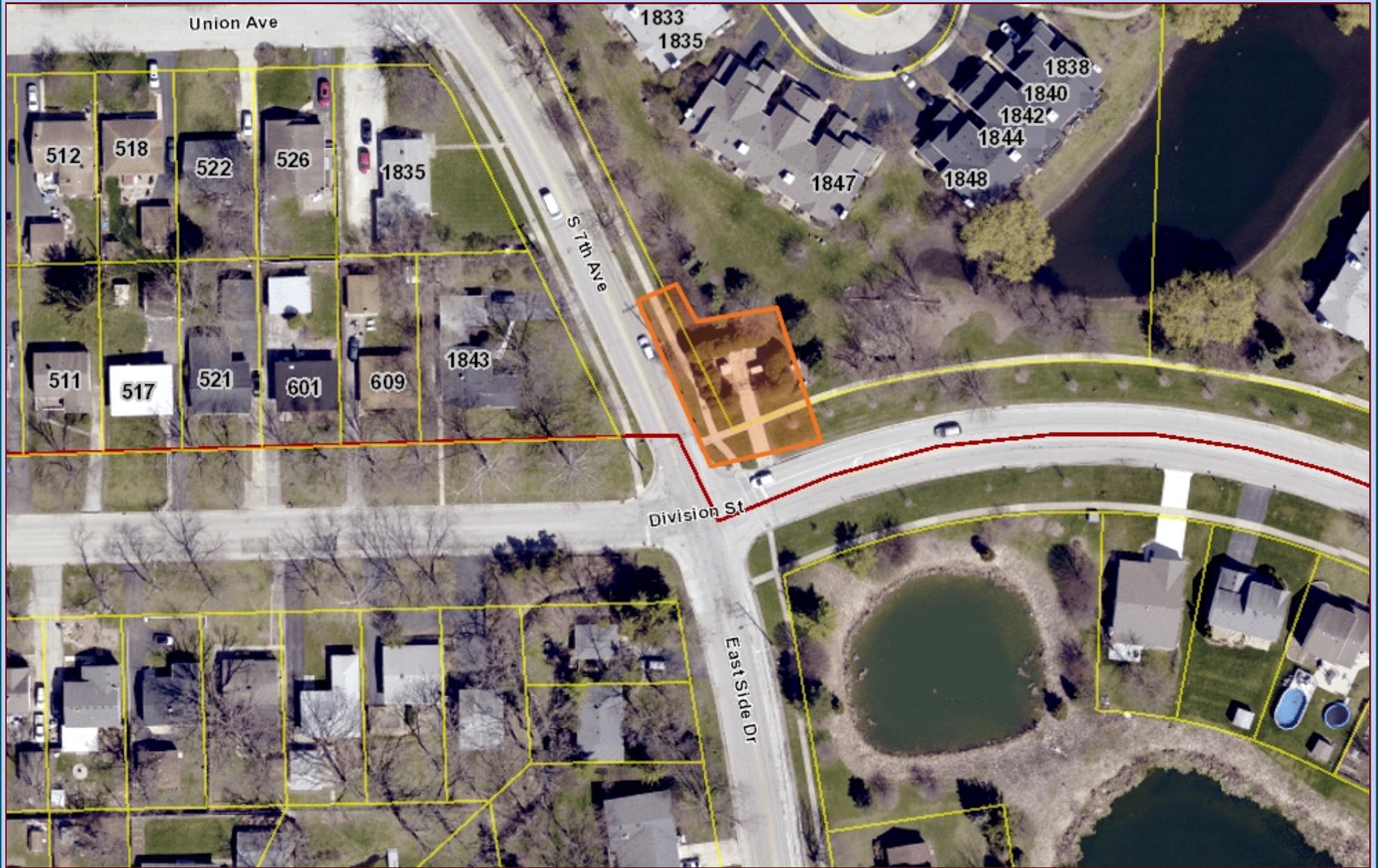
TROTTER AND ASSOCIATES, INC.

SIGNED:

TITLE

TITLE

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7th and Division Lift Station Replacement



Data Source:
City of St. Charles, Illinois
Kane County, Illinois
DuPage County, Illinois
Projection: Transverse Mercator
Coordinate System: Illinois State Plane East
North American Datum 1983
Printed on: May 16, 2018 03:55 PM



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