westmont.il.gov

31 West Quincy Street • Westmont, Illinois 60559
Tel: 630-981-6200

# Village Board Meeting
# March 26, 2020
# Electronic Attendance Only - 6:00 p.m.

Note: This meeting will be held remotely. The meeting will be streaming live on the Village's youtube channel: https://www.youtube.com/VillageofWestmont
Members of the community can participate in the meeting by submitting comments / questions by filling out the online public comment form by visiting https://westmont.illinois.gov/meetinginfo, or by calling (630) 981-6195. If you are calling in a comment please do so 2 hours prior to the meeting time. If there are questions on how to submit a form please email clerk@westmont.il.gov

1. **Call To Order**

2. **Roll Call**

3. **Pledge Of Allegiance**

4. **Open Forum**

   Citizens can submit public comments by filling out an online form or by phone call.

   - Online Public Comment Form can be found by visiting **WESTMONT.ILLINOIS.GOV/MEETINGINFO**. A link to the form will be found here.
   - By phone: Call 630-981-6195 and leave your full name, address, and comment. Comments made by phone must be submitted 2 hours prior to the Village Board Meeting.
   - If there are any questions on how to make a public comments, email clerk@westmont.il.gov.

| | |
|---|---|
| ***Background of Subject Matter*** | * |
| ***Type*** | Discussion Only |

5. **Reports**

   a. **Board Reports**

      - Mayor
      - Clerk
      - Trustees

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Discussion Only |

6. **Items To Be Removed From Consent Agenda**

7. **Consent Agenda (Omnibus Vote)**

   a. **Village Board Minutes**

i. **Board Meeting Minutes**

Board to consider approving the minutes of the Village Board meeting held March 12, 2020.

| | |
|---|---|
| ***Background Of Subject Matter*** | Required Parliamentary Procedure |
| ***Type*** | Motion |

***Documents:***

2020-03-12 VILLAGE BOARD MEETING MINUTES.PDF

b. **Finance Ordinance**

i. **Finance Ordinance #21**

Total to be announced at the meeting.

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Motion |

c. **Purchase Orders**

i. **PO 20202589**

PNC Bank $126,905.26

| | |
|---|---|
| ***Background Of Subject Matter*** | Annual lease payment for fire quint |
| ***Additional Background*** | Payment is included in the finance ordinance, which will be approved simultaneously |
| ***Type*** | Purchase Order |
| ***Budgeted*** | Yes |

***Documents:***

20202589.PDF

ii. **PO 20202590**

Donald E Morris, Architect PC $86,337.92

| | |
|---|---|
| ***Background Of Subject Matter*** | Zoning, building, and inspection fees for February 2020. |
| ***Additional Background*** | Payment is included on the finance ordinance and will be approved simultaneously. |
| ***Type*** | Purchase Order |
| ***Budgeted*** | Yes |

***Documents:***

20202590.PDF

iii. **Total Of Purchase Orders**

$213,243.18

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Motion |

d. **Total Of Purchase Orders And Finance Ordinance**

Total to be announced at the meeting.

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Motion |

e. **Reduction In Available 8A Liquor Licenses**

Board to consider an ordinance decreasing the number of available Class 8A liquor licenses by one (1) due to the closure of Scallywags Brewing, 41 N Cass Avenue.

| | |
|---|---|
| ***Background Of Subject Matter*** | On January 31, 2020, Scallywags Brewing closed and ceased all brewing and selling operations. They have remained closed for over 30 consecutive days thus allowing the Liquor Commissioner to declare their Class 8A liquor license lapsed or forfeited. |
| ***Additional Background*** | Due to the closure and forfeiture of Scallywag Brewing's Class 8A liquor license, the board is asked to reduce the number of available Class 8A licenses by one. |
| ***Recommendation*** | Approve |
| ***Type*** | Ordinance |

## 8. Unfinished Business

a. **Increase In Available Class 4 Liquor Licenses**

Board to consider an ordinance increasing the number of available Class 4 Liquor Licenses by one (1) For Taste Greek Street Food, 645 N Cass Avenue.

| | |
|---|---|
| ***Background Of Subject Matter*** | Taste Greek Street Food 645 N Cass Avenue applied for a Class 4 liquor license allowing them to sell Beer & Wine only. The Board is asked to increase the number of available licenses by 1 to allow the Liquor Commissioner the ability to issue a license. |
| ***Additional Background*** | Taste Greek Street Food is a new restaurant to Westmont and wishes to sell beer & wine with meals. A background check of the owners has indicated they are eligible to receive a license. |
| ***Recommendation*** | Approve |
| ***Type*** | Ordinance |

b. **Absolutely Delicious, 18 N. Cass Avenue**

Board to consider the following actions related to Absolutely Delicious, 18 N. Cass Avenue:

1. Motion to reconsider the previous denial of the request to increase the number of available Class 23 Liquor Licenses by one (1) so that a liquor license is available for Absolutely Delicious.
2. An ordinance increasing the number of available Class 23 liquor licenses by one (1) so that a liquor license is available for Absolutely Delicious.

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Ordinance |

c. **Amendments To Solicitation Regulations**

Board to consider an ordinance amending Chapter 22, Article IV of the Westmont Code of Ordinances to regulate hours for door-to door solicitors and peddlers, and to establish a permit fee for solicitors.

| | |
|---|---|
| ***Background Of Subject Matter*** | As proposed, the hours for solicitors and door-to-door peddlers are limited to 8:00a.m. to 7:00p.m., with no such activities allowed on Sundays or national holidays. The ordinance also replaces the bond for solicitors with a permit fee. |
| ***Type*** | Ordinance |

## 9. New Business

a. **Increase In Available Class 3 Liquor Licenses**

Board to consider an ordinance increasing the number of available Class 3 liquor licenses by one (1) for Testa Inc. d/b/a Del Carmen Restaurant, 214 E Chicago Avenue.

| | |
|---|---|
| ***Background Of Subject Matter*** | Testa Inc. d/b/a/ Del Carmen Restaurant 214 E Chicago Ave is expanding their business to include sit down eating and a small bar. They have applied for a Class 3 liquor license in order to sell alcohol with meals. |
| ***Additional Background*** | A background check of the owners revealed that they are eligible to receive a liquor license should the liquor commissioner choose to do so. They are building out the adjacent suite to create the dining room service. |
| ***Recommendation*** | Approval |
| ***Type*** | Ordinance |

b. **Engineering Agreement - Gateway Beautification Ogden Avenue Project**

Board to consider an ordinance authorizing an engineering agreement with ESI Consultants for Ph3 Construction Inspection Engineering and Material Testing Services on the Gateway Beautification Ogden Avenue Project.

| | |
|---|---|
| ***Background Of Subject Matter*** | Request to approve the sum of $112,500 for Ph3 Construction Inspection Engineering and Material Testing Services for the Village's Gateway Beautification Ogden Avenue Project. |
| ***Additional Background*** | Project includes the construction of a landscape median along Ogden Avenue between Pasquinelli and Oakwood Drives, Gateway Sign at Ogden/Pasquinelli, Ogden/Cumnor, and Cass/67th. |
| ***Recommendation*** | Staff recommends approval of the proposal in the amount of $112,500 for Ph3 Construction Inspection Engineering and Material Testing Services. |
| ***Type*** | Ordinance |
| ***Budgeted*** | Yes |

***Documents:***

ESI PH3 CONSTRUCTION SERVICES OGDEN GATEWAY PROPOSAL 03052020.PDF

c. **Nicor Antenna Site License Agreement**

Board to consider an ordinance approving a Personal Communications System Site License Agreement with Nicor Gas Company.

| | |
|---|---|
| ***Background Of Subject Matter*** | Nicor desires to install an antenna facility on the water tower located at 328 S. Wilmette, along with related equipment. A Site License Agreement is required. The antenna & equipment will occupy less space than a typical cellular communications antenna. |
| ***Additional Background*** | The initial term is 5 years, with 4 renewal options of 5 years each. Nicor will pay an annual license fee to the Village. If approved, this remains subject to building, engineering & zoning review. |
| ***Recommendation*** | Approve |
| ***Type*** | Ordinance |

***Documents:***

PERSONAL COMMUNICATIONS SYSTEM.PDF

d. **East Quincy Street Zoning Requests**

Board to consider ordinances approving the following actions for properties located on the north side of East Quincy Street, between Cass Avenue and Richmond Street:

1. Amendment to the proposed land use map in the 2013 comprehensive land use plan to re-designate said properties from single-family attached land use designation to Light/Industrial / Business Park land use designation.
2. Zoning Ordinance text amendment to create a new M-1 Limited Manufacturing District.
3. Zoning Ordinance map amendment to rezone the following properties in this East Quincy Street corridor to the M-1 Limited Manufacturing District:

20 E. Quincy Street
25 E. Quincy Street
100 E. Quincy Street
130 E. Quincy Street
138 E. Quincy Street
200 E. Quincy Street
222 E. Quincy Street
318 E. Quincy Street

| | |
|---|---|
| ***Background Of Subject Matter*** | Redevelopment of these properties as residential has not occurred and is unlikely to occur. This new zoning district acknowledges the existing limited manufacturing and governmental uses along this corridor and allows them to continue. |
| ***Additional Background*** | PZC unanimously recommended these 3 items. |
| ***Recommendation*** | Approve. |
| ***Type*** | Ordinance |

***Documents:***

BOARD MEMO FOR EAST QUINCY COMPREHENSIVE PLAN AMENDMENT.PDF
BOARD MEMO EAST QUINCY REZONE INITIATIVE.PDF
EXHIBITS EAST QUINCY REZONE INITIATIVE.PDF

e. **Amended Intergovernmental Agreement With Department Of Healthcare And Family Services**

Board to consider an ordinance approving an amended Intergovernmental Agreement with The Department of Healthcare and Family Services that will provide greater cost recovery to the Village of Westmont Fire Department for Medicaid patients.

| | |
|---|---|
| ***Background Of Subject Matter*** | The Fire Department is requesting the Village approve an amended agreement. Original agreement was approved by the Board at the 10/10/2019 meeting. |
| ***Type*** | Ordinance |

***Documents:***

AMENDED IGA DEPT HEALTHCARE AND FAMILY SERVICES 10-26-20.PDF

f. **Extension Of Declaration Of State Of Local Emergency**

Board to consider a motion which extends until April 23, 2020 the Declaration of State of Local Emergency executed by the Mayor on March 20, 2020.

| | |
|---|---|
| ***Background Of Subject Matter*** | * |
| ***Type*** | Motion |

## 10. Miscellaneous

## 11. Executive Session

This Board may adjourn to closed session to discuss matters so permitted and may act upon such matters upon returning to open session.

## 12. Adjourn

westmont.il.gov

Village Clerk's Office

31 West Quincy Street • Westmont, Illinois 60559
Tel: 630-981-6220 Fax: 630-829-4441

## Clerk's Office

# Village of Westmont

**MINUTES OF THE BOARD MEETING HELD Thursday, March 12, 2020.**

**Mayor Gunter called the meeting to order at 6:00 P.M.**

***WESTMONT VILLAGE BOARD MEETING ROLL CALL:***

| | | | | |
|---|---|---|---|---|
| ***PRESENT:*** | Mayor Gunter | P | Clerk Szymski | P |
| ***TRUSTEES:*** | Addington | P | Barker | P |
| | Barry | P | Guzzo | P |
| | Liddle | P | Nero | P |

***STAFF:***

| | | | | | |
|---|---|---|---|---|---|
| **May** (Village Mgr) | P | **Parker** (Finance Director) | P | **Sylvester** (Community Dev. Director) | P |
| **Brainerd** (HR Director) | P | **McIntyre** (Communications Director) | A | **Liljeberg** (I.T. Manager) | P |
| **Chief Gunther** (Police Dept.) | P | **Dep Chief Thompson** (Police Dept.) | P | **Dep Chief Gruen** (Police Dept.) | P |
| **Chief Riley** (Fire Dept.) | P | **Dep Connelly** (Fire Dept.) | P | **Richards** (Deputy Clerk) | A |
| **Ramsey** (P.W. Director) | A | **Dralle** (EMS Director) | P | **Mulhearn** (Deputy Liquor Commissioner) | P |

***ATTORNEY:*** **Zemenak** P **Carrara** A

***A QUORUM WAS PRESENT TO TRANSACT BUSINESS.***

***PRESS:***

Bugle A

***CHAMBER OF COMMERCE DIRECTOR:*** **Forssberg** - P

***VISITORS:***

**THOSE PRESENT RECITED THE PLEDGE OF ALLEGIANCE.**
Mayor welcomed everyone to the meeting.

**OPEN FORUM:**

- Jeff Swaler, Westmont Automotive
  - Talked about the storage container on their property and the way it's being handled. There have been no complaints from neighbors.
  - Bruce Sylvester addressed the Village Board and this has been discussed with the staff to see if it can be allowed as an accessory structure in the business district, which is not allowed.
  - Mr. Swaler talked about other guidelines, the use of these components, and

studies.

**VOTING KEY:** **A**=ABSENT **AB**=ABSTAIN **N**=NO **W**=Withdrawn
**P**=PRESENT **Y**=YES **R**=RECUSE

**Note:** *The items listed in these minutes are summaries only and are not meant to be a direct transcript of the Mayor's, Manager's, Clerk's and Trustees' comments. For actual quotes of the referenced items please refer to the Archival video copy of this meeting.*

**VOTING SUMMARY**

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|
| TRUSTEE ADDINGTON | Y | N | Y | Y | Y | Y | Y | Y | Y |
| TRUSTEE BARKER | Y | N | Y | Y | Y | Y | Y | Y | Y |
| TRUSTEE BARRY | Y | N | Y | Y | Y | Y | Y | Y | Y |
| TRUSTEE GUZZO | Y | N | Y | Y | Y | Y | Y | Y | Y |
| TRUSTEE LIDDLE | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| TRUSTEE NERO | Y | N | Y | Y | Y | Y | Y | Y | Y |

| | 10 | 11 | 12 | 13 |
|---|---|---|---|---|
| TRUSTEE ADDINGTON | Y | Y | Y | Y |
| TRUSTEE BARKER | Y | Y | N | Y |
| TRUSTEE BARRY | Y | Y | N | Y |
| TRUSTEE GUZZO | Y | Y | Y | Y |
| TRUSTEE LIDDLE | Y | Y | Y | Y |
| TRUSTEE NERO | Y | Y | N | Y |
| MAYOR GUNTER | | | Y | |

## REPORTS

**Mayor Gunter**

- Requested staff members from the Fire Department to address COVID-19.
- Deputy Chief Connelly addressed the Village Board.
  - It is not as deadly as Ebola but it has a contagion rate of 2 - 4.
  - The mortality rate in people less than 40 years of age is low.
  - This is a global pandemic as of March 11, 2020 and has spread rapidly to more than 100 countries.
  - Once there is significant community spread, the case rates can increase 74% in 24 hours and 200x in three weeks.
  - Overall mortality is approximately 3%, but is 15% in patients over 80 years old.
  - COVID-19 is estimated to be 10-30% more deadly than the seasonal flu.
  - We can only do what is in our control. EMS Director has been in frequent contact with Good Samaritan EMS Project Medical Director and staff.
- Director Lynn Dralle addressed the Village Board.
  - She talked about the importance of washing your hands and the effectiveness of hand sanitizer.
  - Older adults & people who have severe underlying chronic medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.
  - If you are sick, stay home. If you are not sick, you do not need to wear a face

mask.
    - Clean and disinfect frequently touched surfaces.
- Called Superintendent Kevin Carey to the podium to talk about the DuFour Award.
    - Superintendent Carey asked Principal Balderman to explain the DuFour Award.
    - It is a prestigious award and the school received $25,000 dollars. The graduation rate is over 99% at Westmont High School. There is more information on the school's website. We are proud to be named the best in the United States.
- Invited Susan Frick and Mary Fergusson to talk about the Dementia Friendly Community. Those who have dementia and their caregivers need a lot of community support.

**Village Clerk Szymski**

- Early voting ends on Saturday. If you want to vote early the closest place is Downers Grove Village Hall.
- Brush & Yard Waste Pick up begins April 6, 2020.
- Unlimited bags of leaves for pick up will be April 13 - 17th and they must be in kraft paper bags.
- Happy St. Patrick's Day to everyone.

**Trustee Barker**

- Westmont First will meet Monday, 6pm, at the Westmont Public Library.
    - You can fill out your Census Information online or over the phone.
    - Nancy Bartos will come and talk to us about the Hope Mural Project.
    - The EIC members are working on a composting program.
    - The EIC is working on a second program for people to dispose of metal and scrap wood on Saturday, April 25th.

**Trustee Liddle**

- The Administration / Finance Committee meeting was held earlier today and we discussed curbside compost pick up, authorized hours for solicitors, emergency medical services RFP, changing the collection agency for the Police Department, and a water rates increase.
- Talked about the 2020 Census. It is important to be counted because this goes to shape the future for your family and community for the next 10 years. Make sure to get counted.
- Westmont Special Events is holding the Jig & Swig Pub Crawl, March 14th, from 2 - 6pm.

**Trustee Nero**

- The next Public Works meeting is March 26, 4:30pm at Village Hall.
- Respond to the 2020 Census online, by phone, or by mail. It is important to respond.
- Wash your hands.

**Trustee Barry**

- Recapped the Economic Development Committee meeting last week.
    - Received a proposal for Nature's Best to expand their parking lot. That will be

going to the Planning and Zoning Committee in the future.
  - There was a proposal for a mixed use cafe at 22 N Cass Avenue. The idea was for a cafe /espresso / smoothie bar.
  - There was a business after hours at Urban Veterinary.
  - There will be a ribbon cutting at Dotty's at their new location, 6601 S. Cass Avenue. The event is scheduled for Friday, March 20th at 11:30am.
- Talked about the Rotary Club Scholarship program. 6 students received scholarships and two of those students were from Westmont High School. This was held at Zazzo's and Dominic was a wonderful host.
- Great job to District 201.

**Trustee Johanik-Guzzo**
- The next Public Safety Committee meeting will be May 21, 4:30pm at Westmont Village Hall.
- The Knights of Columbus, 25 N. Cass Avenue, will be holding their Lenten Fish Fry. It is every friday from 5 - 8pm till Good Friday.

Mayor Gunter asked Chief Riley about the Citizens Police Academy.
- Chief Riley said that staff has yet to make a determination on the program. The current thought is that the first class will be canceled.

**Trustee Addington**
- Reminded everyone that the primary election is on Tuesday. Please vote, your vote does count.
- The next Community Development Committee meeting will be April 23, 4:30pm at Village Hall.

**ITEMS TO BE REMOVED FROM CONSENT AGENDA:**
No items to be removed from the consent agenda.

**(1) CONSENT AGENDA [Omnibus Vote]:**
**Village Manager May** addressed the Board on this agenda item.

Motion by **Trustee Liddle** to approve the consent agenda.

**(A) BOARD MEETING MINUTES**
Board to consider approving the minutes of the February 27, 2020 Village Board Meeting.

**(B) FINANCE ORDINANCE #20: Dated March 12, 2020** in the amount of **$2,479,311.17.**

**(C) PURCHASE ORDERS**

| | | |
|---|---|---|
| **20202444** | **Sayers Technology Services, LLC** | **$ 128,889.07** |
| **20202445** | **Baxter & Woodman, Inc** | **69,500.00** |

| | | |
|---|---|---|
| | **TOTAL OF PURCHASE ORDERS** | **$ 198,389.07** |
| | **TOTAL OF PURCHASE ORDERS & FINANCE ORDINANCE #20** | **$ 2,677,700.24** |

Seconded by **Trustee Nero** and the motion passed.

**VOTE ON MOTION #1**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

## UNFINISHED BUSINESS

## NEW BUSINESS

**(2) INCREASE IN AVAILABLE CLASS 23 LIQUOR LICENSES**
**Deputy Liquor Commissioner Mulhearn and John Fleming** addressed the Board on this item.

- There is a separate room that can be used for video gaming. It is already a closed area.
- The business owner is looking to get between 4 - 5 machines, and minimal signage. Not looking to be a video gaming cafe, and is looking to be on a level playing field with other like businesses.
- Trustee Barker is not in favor of increasing video gaming in Westmont.
- Trustee Barry also expressed that he feels there are enough video gaming cafes. There are other underlying issues regarding code enforcement and unpaid utilities.
- Mr. Fleming said that Cruisin' Nights was his idea.
- Trustee Nero talked about the importance of being in good standing and revisit it in the future.
- Mayor Gunter talked about the process and the Deputy Liquor Commissioner provides a history of compliance and presents that to the Village Board.

Motion by **Trustee Barry** to consider an ordinance increasing the number of available Class 23 Liquor Licenses by one (1) for Absolutely Delicious, 18 North Cass Avenue.

Seconded by **Trustee Nero** and the motion failed.

**VOTE ON MOTION #2**
Ayes: Liddle
Nays: Addington, Barker, Barry, Guzzo, Nero
Absent: None

**(3) INCREASE IN AVAILABLE CLASS 6 LIQUOR LICENSES**

**Deputy Liquor Commissioner Mulhearn** addressed the Board on this item.

Motion by **Trustee Nero** to consider an ordinance increasing the number of available Class 6 liquor licenses by one (1) for Nature's Best Grocery LLC d/b/a/ Nature's Best, 237 North Cass Avenue.

Seconded by **Trustee Liddle** and the motion passed.

**VOTE ON MOTION #3**
Ayes: Addington, Barry, Barker, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(4) 1 WEST QUINCY STREET - ECONOMIC DEVELOPMENT AGREEMENT AMENDMENT**

**Finance Director Parker** addressed the Board on this item.

Motion made by **Trustee Addington** to consider an ordinance approving a proposed amendment to the previously approved economic development agreement for 1 West Quincy to provide additional TIF support to the developer.

Seconded by **Trustee Liddle** and the motion passed.

**VOTE ON MOTION #4**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(5) 9-11 WEST QUINCY - ECONOMIC DEVELOPMENT AGREEMENT**

**Community Development Director Sylvester & Finance Director Parker** addressed the Board on this item.

Motion made by **Trustee Barry** to consider an ordinance approving an Economic Development Agreement between the Village of Westmont and Luxica LLC 11 Series, developer, to provide an economic incentive for the renovation and rehabilitation of the long-vacant building at 9-11 West Quincy Street.

Seconded by **Trustee Nero** and the motion passed.

**VOTE ON MOTION #5**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(6) EMERGENCY MEDICAL SERVICES CONTRACT**

**Fire Chief Riley** addressed the Board on this item.

Motion made by **Trustee Addington** to consider an ordinance accepting a proposal for Emergency Medical Services and authorizing a contract consistent with the RFP documents.

Seconded by **Trustee Nero** and the motion passed.

**VOTE ON MOTION #6**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(7) CBD ALLEY RECONSTRUCTION PROJECT CHANGE ORDER 1 REQUEST**
**Village Manager May** addressed the Board on this item.

Motion made by **Trustee Guzzo** to consider an ordinance approving Change Order #1 with R. W. Dunteman for the CBD Alley Reconstruction Section C Project.

Seconded by **Trustee Liddle** and the motion passed.

**VOTE ON MOTION #7**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(8) AWARD OF BID PROPOSAL - GATEWAY OGDEN AVENUE BEAUTIFICATION PROJECT**
**Village Manager May** addressed the Board on this item.

Motion made by **Trustee Addington** to consider an ordinance accepting the bid proposal from A-Lamp Concrete Contractors for the Village's Gateway Ogden Avenue Beautification Project, and authorizing a contract consistent with bid documents.

Seconded by **Trustee Liddle** and the motion passed.

**VOTE ON MOTION #8**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(9) CURBSIDE COMPOSTING PROGRAM**
**Village Manager May** addressed the Board on this item.

Motion made by **Trustee Liddle** to consider an ordinance to approve an addendum to the Waste Management contract to provide curbside composting to Westmont residents.

Seconded by **Trustee Barker** and the motion passed.

**VOTE ON MOTION #9**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(10) WATER RATE ADJUSTMENT**
**Finance Director Parker** addressed the Board on this item.

Motion made by **Trustee Liddle** to consider an ordinance amending water rates.

Seconded by **Trustee Nero** and the motion passed.

**VOTE ON MOTION #10**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**(11) HOURS FOR SOLICITORS**
**Attorney Zemenak** addressed the Board on this item.

Motion made by **Trustee Barry** to consider postponing an amendment to Chapter 22, Article IV, Division 3 of the Municipal Code to set hours of solicitation in the Village.

Seconded by **Trustee Nero** and the motion to postpone to the next meeting passed.

**VOTE ON MOTION #11**
Ayes: Addington, Barker, Barry, Guzzo, Liddle, Nero
Nays: None
Absent: None

**MISCELLANEOUS:**

**(12) RECONSIDERATION - ABSOLUTELY DELICIOUS VIDEO GAMING**
**Attorney Zemenak, John Fleming, and Elizabeth Mooney** addressed the Board on this item.

- Ms. Mooney asked the Village Board to reconsider their decision if some of the outstanding issues were resolved.
- Attorney Zemenak explained reconsidering tonight or in two weeks.
- Deputy Liquor Commissioner Mulhearn mentioned that there are other outstanding issues with code enforcement.
- Trustee Addington wished for the business to maintain a good status, not just short term, but long term.
- Attorney Zemenak talked about the process of reconsideration.
- Trustee Nero talked about making it right and keeping it right.
- Trustee Barry talked about having a good status for a year, rather than 90 days.
- Trustee Guzzo felt comfortable with revisiting it in 6 months rather than 90 days.
- Trustee Liddle also felt that 6 months is fair and that is similar to what we did for other businesses.

- Trustee Barker said that even if we get to 6 months from now, it is not a given that a license will be granted.
- Mr. Fleming said his business tends to be seasonal and it's a tough time between summer and winter.
- Village Manager May asked if the business could apply in advance to the State for a gaming license.
- Deputy Liquor Commissioner Mulhearn explained that the wait for a State gaming license is about 2 months. They can apply in advance, but if the local authorities deny the license, the applicant loses that money.

Motion made by **Trustee Guzzo** to reconsider the previous denial for increasing the number of available Class 23 Liquor Licenses by one (1) for Absolutely Delicious 18 North Cass Avenue.

Seconded by **Trustee Addington** and the motion to reconsider passed. This item will appear on the agenda in two weeks.

**VOTE ON MOTION #12**
Ayes: Addington, Guzzo, Liddle, Gunter
Nays: Barker, Nero, Barry
Absent: None

**(13) ADJOURNMENT**
Motion by **Trustee Liddle** to adjourn the meeting.
Seconded by **Trustee Nero** and the motion passed.

**VOTE ON MOTION #13**
Ayes: Addington, Barker, Barry, Liddle, Guzzo, Nero
Nays: None
Absent: None

**MEETING ADJOURNED AT 7:45 P.M.**

**ATTEST:** **APPROVED:**

Virginia Szymski, Village Clerk

Ronald J. Gunter, Mayor

Dated this 26th day of May, 2020

# Village of Westmont

# Purchase Order

PO Date: 2020-03-20



## Bill To:

FINANCE
31 W QUINCY
WESTMONT, IL 60559
Email: AP@WESTMONT.IL.GOV

| THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS. | |
|---|---|
| Purchase Order # | 20202589 |

## Vendor:

PNC Bank, National Association
PNC Equipment Finance, LLC
995 Dalton Avenue
Cincinnati, OH 45203
Email: pncef_cs@pnc.com

## Ship To:

See Shipping Information Below

| Vendor Number | Vendor Phone Number | Vendor Fax Number | Delivery Reference |
|---|---|---|---|
| 100506 | | | |

| Item# | Description/PartNo | QTY | UOM | Unit Price | Extended Price |
|---|---|---|---|---|---|
| | Fire Quint Lease Payment 4/25/19-4/24/20 | | | | |
| 1 | Fire Quint Lease Payment 4/25/19-4/24/20<br>Contract # 197242000<br>GL Account: 2552525 - 57095 - 1GOV $126,905.26<br><br>Ship To: FINANCE<br>31 W QUINCY<br>WESTMONT, IL 60559<br>Email: AP@WESTMONT.IL.GOV | 1.0 | EACH | $126,905.26 | $126,905.26 |

By: Spencer Parker
Authorized Signature

| PO Total | $126,905.26 |
|---|---|

*All vendors must comply with applicable regulations of the Illinois Department of Human Rights.

*This order is exempt from Federal Excise Tax under title 25 USCA, and from Illinois Sales Use and Service Taxes. E9997-4320-07.

*Acceptance of this Purchase Order constitutes agreement by vendor that any action arising out of this Agreement may be commenced only in the State or Federal courts located in DuPage County and/or the Northern District of Illinois. The prevailing party shall have their attorney's fees and court costs paid by the losing party.

*The Village of Westmont will process all bills in accordance with the Illinois Government Prompt Payment Act 50 ILCS 505.

# Village of Westmont

# Purchase Order

PO Date: 2020-03-20



## Bill To:

MUNICIPAL SERVICES
31 W QUINCY
WESTMONT, IL 60559

| THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS. | |
|---|---|
| Purchase Order # | 20202590 |

## Vendor:

DONALD E. MORRIS ARCHITECT P.C
616 EXECUTIVE DRIVE
WILLOWBROOK, IL 60527
Email: donmorrisarchitects@hotmail.com
Fax: 630-920-8091

## Ship To:

See Shipping Information Below

| Vendor Number | Vendor Phone Number | Vendor Fax Number | Delivery Reference |
|---|---|---|---|
| 100538 | 630-920-8175 | 630-920-8091 | |

| Item# | Description/PartNo | QTY | UOM | Unit Price | Extended Price |
|---|---|---|---|---|---|
| | Building Reviews - February 2020 | | | | |
| 1 | Zoning Review<br>GL Account: 0153717 - 55031 - 4EDV $25.00<br><br>Ship To: MUNICIPAL SERVICES<br>31 W QUINCY<br>WESTMONT, IL 60559 | 1.0 | EACH | $25.00 | $25.00 |
| 2 | Building Review<br>GL Account: 0153717 - 55031 - 4EDV $85,912.92<br><br>Ship To: MUNICIPAL SERVICES<br>31 W QUINCY<br>WESTMONT, IL 60559 | 1.0 | EACH | $85,912.92 | $85,912.92 |
| 3 | Inspections<br>GL Account: 0153717 - 55031 - 4EDV $400.00<br><br>Ship To: MUNICIPAL SERVICES<br>31 W QUINCY<br>WESTMONT, IL 60559 | 1.0 | EACH | $400.00 | $400.00 |

By: Spencer Parker
Authorized Signature

| PO Total | $86,337.92 |
|---|---|

*All vendors must comply with applicable regulations of the Illinois Department of Human Rights.

*This order is exempt from Federal Excise Tax under title 25 USCA, and from Illinois Sales Use and Service Taxes. E9997-4320-07.

*Acceptance of this Purchase Order constitutes agreement by vendor that any action arising out of this Agreement may be commenced only in the State or Federal courts located in DuPage County and/or the Northern District of Illinois. The prevailing party shall have their attorney's fees and court costs paid by the losing party.

*The Village of Westmont will process all bills in accordance with the Illinois Government Prompt Payment Act 50 ILCS 505.

ESI Consultants, Ltd.
*Excellence, Service, Integrity*

March 5nd, 2020

Mr. Noriel Noriega, P.E.
Village of Westmont
31 West Quincy Street
Westmont, IL 60559

Construction Engineering Services for the Ogden Avenue Gateway Project

Dear Mr. Noriega:

ESI Consultants, Ltd is pleased to provide this proposal for full-time construction inspection services for the Ogden Avenue Gateway Beautification Project (Project). As part of this project ESI Consultants, Ltd will provide full-time construction observation and engineering for the Village of Westmont (Village) for the duration of the Project. Proposed construction includes full-depth asphalt removal, pavement patching, curb & gutter, landscaped median, sidewalk removal & replacement, irrigation system, and electrical outlets. If you find this agreement to be acceptable, the executed copies of this letter, together with Attachment A - General Terms and Conditions attached hereto which set forth the contractual elements of this agreement, will constitute an agreement between the Village of Westmont (CLIENT) (Village) and ESI Consultants, Ltd. (ENGINEER) (ESI) for services on this project.

**BASIC SCOPE OF SERVICES - CONSTRUCTION**

ESI Consultants, Ltd proposes the following scope of services as part of this project:

Task 1- Preconstruction Tasks

1. Review the plans and specifications prior to construction, including the pay items and quantities relative to the elevations and dimensions. Items will be checked for proper units (SF vs. SY) and sufficiency (or excess) of quantities particularly with compatible items (wearing surface & removal). Also review for potential conflicts or anticipate issues and develop solutions prior to construction.
2. Attend/Conduct a preconstruction meeting with all interested parties to discuss goals, objectives, and issues the Village of Westmont may have.
3. Prepare a project contact list with names, addresses, phone numbers, and fax numbers for all contractors, subcontractors, and suppliers for the project. Also 24-hour contact numbers for applicable parties.
4. Review project permits and requirements needed for construction.
5. Review contractors proposed construction schedule for compliance with the contract milestone dates. Submittals with long lead times should be included on this schedule as well as all major subcontractors' work.
6. Document existing conditions with digital photographs and videotape. Document and create logs of existing utilities and surface features.

7. Conduct a utility meeting, or coordinate utility agencies at the pre-construction meeting, to verify relocation schedules. ESI's Resident Engineer will assist with resolving relocation and adjustment issues.
8. Conduct a materials meeting and review approved material sources, establish back-up sources, and develop overall plan for materials acceptance.
9. Review shop drawings for acceptability and approve submittals, as needed
10. Field books, quantity books, diary, and all other forms of proper project documentation shall be set up. Prepare maintenance of traffic checklist.
11. Verify control points for project layout and work with the contractor's layout personnel.
12. Provide advanced notification to the community through flyers, changeable message boards and the Village's website. Meet with community stakeholders, as needed.

Task 2- Construction Tasks

1. Maintain a site presence at all times when the contractor is working. ESI's resident engineer will provide daily communication to the Village, residents and businesses regarding traffic staging, access for emergency vehicles and pedestrian access, driveway access, dust control, material storage, construction staging as well as noise levels. Keep inspector's daily reports and quantity book records up to date. Also maintain project diary noting all contractor and equipment on the site, necessary observations, actions and events.
2. Maintain orderly files of all relevant project documents so that they can be easily accessed including submittal logs. Check and approve project submittals for compliance with standards. Forward recommendations for changes to the Village's representative or the designer for concurrence.
3. Perform quantity measurements to prepare pay estimates and manage the change order process when needed. Review with contractor and submit to the Village with appropriate waivers and recommendation for payment.
4. Hold weekly progress meetings to discuss upcoming work for the week and critical issues that need to be resolved. Follow up items from previous issues are documented in the minutes and discussed so they don't fall through the cracks. Prepare minutes for all meetings and distribute to appropriate parties.
5. Provide liaison functions related to coordination of contractors, utilities, developers, other agencies and property owners engaged or affected by the project. ESI will survey all known utilities and documenting their -location to identify what utilities may require adjustments.
6. Maintain daily contact with Prime contractor, utility companies and their contractors to monitor progress and schedule and recommend actions that should be taken if falling behind.
7. ESI's resident engineer will periodically observe the traffic control set-up for compliance with the contract documents and MUTCD standards and will inform the contractor immediately of any deficiencies. In addition, our team will observe that all structures are protected from debris and that dust is minimized during construction.
8. Provide Quality Assurance services and provide necessary coordination and qualified personnel to perform work for all material inspections. Obtain concrete and asphalt samples to perform necessary testing to fulfill QA requirements. Reports will be prepared in a timely manner and coordinated with QC data from the contractor. SEECO will perform these services.
9. Maintain and periodically transmit to contractor a running punch list to expedite project close out. This is especially critical near the end of a stage to get items completed before the stage change where access to certain areas may no longer be available.

10. Obtain material acceptance certifications as materials are incorporated into the project to expedite project closeout. Withhold payment until material inspection and certifications are provided.
11. Monitor and document erosion control and ensure conformity with the plans and standards and compliance with the approved SWPP Plan.
12. Task includes additional field observation services performed for Cass Ave Basin and Cass/Burlington crossing construction observation services.
13. Task includes Construction Inspection services performed by Gary Weber Associates as it pertains to the construction of Westmont Gateway signs and in accordance with Attachment A.

Task 3 - Post Construction Tasks

1. Perform final inspection with the Village of Westmont representative, contractor, and all applicable utilities to finalize punch list. Document the items in the final punch list and submit them to the contractor for close out. Verify completion of all work and provide a recommendation of acceptance to Village of Westmont.
2. Obtain and review record drawings provided by the contractor to confirm all project changes have been incorporated. Submit the final record drawings to Westmont.
3. Verify that all documentation is accomplished and that all material inspections and certifications have been accounted for and are complete. Receive final acceptance of all quantities from the contractor and verify that all final waivers have been provided before issuing final recommendation to complete. Close out project records within 45 days after all construction is completed.

**Schedule**

ESI will start services after receipt of CLIENT's acceptance of this proposal and Notice to Proceed. Based on the aforementioned assumptions, the project is anticipated to begin in April of 2020 and reach substantial completion by June 1st, 2020. Punch-list items, restoration, and landscaping items may extend into Fall 2020.

**Client Responsibilities**

CLIENT is to provide the following in a timely manner:

1. Guarantee and make all provisions for ENGINEER to enter upon public and private lands as required to perform the services under this agreement.
2. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to ENGINEER's services for the Project.
3. Provide all criteria and full information as to CLIENT's requirements for the PROJECT, including objectives and constraints and performance requirements.
4. Furnish to ENGINEER, as required for performance of ENGINEER's Services, other special data or consultations not covered in Basic Services of the Engineer
5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

6. Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.
7. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.
8. Bear all costs incidental to compliance with the requirements of this Section.

**COMPENSATION**

1. **Amount of Payment:**
For the work outlined in the Scope of Services described herein, the Village shall compensate ESI Consultants, Ltd in the lump-sum amount of **$112,500.00**.

For additional, reduced or changed scope of services, the amount of payment shall be adjusted based on the ESI 2020 Naperville Standard Billing Rate Sheet hourly-labor-billing-rate-plus-reimbursable-expense basis. This rate sheet has been previously accepted by the Village.

Reimbursables are defined as travel and subsistence, printing, vehicles, testing apparatus, commercial services, courier expenses, telephone/fax and subconsultants.

2. **Statements:**

ESI will bill CLIENT monthly for the engineering services and reimbursable expenses covered under this base agreement on a percent complete basis. Payment is to be made within thirty (30) days of receipt of our invoice. If CLIENT objects to any invoice submitted by us, CLIENT shall so advise us in writing giving reasons therefore within fourteen (14) days of receipt of such invoice. If no such objection is made, the invoice will be considered acceptable to CLIENT. ESI reserves the right to stop work on the PROJECT if our invoices are overdue by more than thirty (30) days. ESI shall not be liable for damages arising out of any such stop of work, nor deemed to be in default of this Agreement as a result thereof. These financial arrangements are based on the orderly and continuous progress of the PROJECT.

It is necessary that CLIENT advise us in writing at an early date if CLIENT has budgetary limitations for the overall Project Cost or Construction Cost. ESI will endeavor to work within those limitations. If CLIENT requests, ESI will submit to CLIENT periodically during the report preparation phase of our services our opinions as to the probability of completing construction within CLIENT's budget and, where appropriate, request an adjustment in the budget or a revision in the extent, scope or quality of the PROJECT. ESI does not guarantee that our opinions will not differ from negotiated prices or bids. If CLIENT wishes greater assurance as to probable construction costs or if CLIENT wishes formal estimates, an independent cost estimator should be employed.

The proposal cost estimate for engineering services prepared by ENGINEER represents Engineer's best judgment as a design professional. It is recognized, however, that neither the Engineer nor the CLIENT has any control over the costs of changes required by the reviewing agencies or unforeseen conditions. Accordingly, ENGINEER cannot and does not warrant or represent that final costs will not vary from those stated above.

**GENERAL CONSIDERATIONS**

This proposal and the attached Attachment A - "General Terms and Conditions", hereto and incorporated therein, represent the entire understanding between CLIENT and ENGINEER in respect of the Project and may only be modified in writing when signed by both parties. If this proposal satisfactorily sets forth CLIENT's understanding of the arrangement between CLIENT and ENGINEER, please sign the enclosed copy of this letter in the space provided below and return it to ESI Consultants, Ltd. This proposal will be open for acceptance for thirty (30) days from the date hereon unless changed by us in writing.

We appreciate the opportunity to serve the Village of Westmont. If you have any questions regarding this proposal, please contact Anthony Bryant at (630) 470-7987.

Sincerely,

ESI CONSULTANTS, LTD

Anthony J. Bryant, P.E.
Project Manager

Kevin P. Hayes

Kevin Hayes, P.E.
Vice President

Village of Westmont

_____
Signature

_____
Title

_____
Date

# PERSONAL COMMUNICATIONS SYSTEM
# SITE LICENSE AGREEMENT

ENTERED INTO BY AND BETWEEN:

The Village of Westmont, an Illinois municipal corporation,

And

Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation

_____, 20~~19~~20

For Property located at:

328 South Wilmette Avenue
Westmont, DuPage County, Illinois

THIS LICENSE AGREEMENT ("Agreement") is entered into between the Village of Westmont ("Village"), an Illinois municipal corporation, and Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation ("Licensee") and is dated this ____ day of _____, 2020~~19~~ ("Effective Date").

WHEREAS, the Village is a municipal corporation organized and existing under the laws of the State of Illinois; and

WHEREAS, the 1970 Illinois Constitution provides that units of local government may contract and otherwise associate with individual associations and corporations in any manner not prohibited by law or ordinance (1970 ILL. CONST., Art. VII, Sec. 10); and

WHEREAS, the Village has found that it is in the public interest to accept consideration from Licensee and permit Licensee, for the purposes described herein, to occupy and use a portion of the real estate described below benefiting and occupied by the Village; and

WHEREAS, the Village finds that it is in the best interests of their citizens and the health, safety, and welfare of the community to enter into this Agreement; and

WHEREAS, Westmont owns the real estate commonly known as 428 South Wilmette Avenue, Westmont, IL legally described as set forth in Exhibit "A" attached hereto, and depicted in Exhibit "B" attached hereto (the "Property"); and

WHEREAS, the Village owns and operates upon the Property (a) an elevated water storage facility ("Elevated Tank") forming part of the Village's public water supply system provided pursuant to the applicable provisions of the Illinois Municipal Code and (b) a Village Police Department communications antenna (both collectively referred to herein as "Village Operations"); and

WHEREAS, the Village agrees to permit and the Licensee intends to install, operate and maintain a wireless communications service system including a certain wireless Antenna Facility (as hereafter defined) on the top of the Elevated Tank and such related equipment on ground space near the Elevated Tank - - all pursuant to and in accordance with the terms of this Agreement; and

WHEREAS, the Village desires to license Licensee and Licensee desires to occupy a portion of the certain space on the Elevated Tank for the installation of certain antennas and ground space for the installation of Licensee's equipment as depicted on Exhibit "C" (such space being hereinafter referred to as the "Premises") and, further, the Village desires to grant and the Licensee desires to accept a license for its Permitted Use (as hereafter defined) of the Premises for the construction, operation and maintenance of an Antenna Facility (as hereafter defined), including space for cable, conduit and sleeves; *provided*, however, that the construction, operation and maintenance of the Antenna Facility do not interfere with the Village Operations pursuant to the terms of this Agreement; and

WHEREAS, Licensee agrees to compensate the Village with the annual payments and promises herein set forth.

NOW, THEREFORE, in consideration of the promises and payments herein set forth and other good and valuable consideration, the sufficiency and validity of which are hereby mutually acknowledged, the parties agree:

## 1 RECITALS AND EXHIBITS INCORPORATED

The above recitals and the exhibits referred to in this Agreement are incorporated herein by reference as if set forth fully herein. To the extent the terms of this Agreement are more specific than the recitals or vary from the recitals, the terms of this Agreement shall control.

## 2 DEFINITIONS

2.01 Antenna Facility. The communications equipment and antennas, including all personal property, equipment, improvements, ground equipment and ground shed and other related facilities as described and depicted pursuant to approved Plans and Specifications, as may be amended from time to time with the written approval of the Village subject to the terms herein, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.02 Plans and Specifications. The plans, drawings, specifications titled "Site Plan and Engineering" initialed and dated by the Village and Licensee, are attached hereto as Exhibit "C." The Plans and Specifications are preliminary to the Final Specs, as hereinafter defined, which shall be substantially identical to the Plans and Specifications.

2.03 Premises. That portion of ground space and the Elevated Tank licensed to Licensee for the Antenna Facility as set forth in Exhibit "C."

2.04 Licensee. "Licensee" shall mean Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation, and, for purposes of the license granted herein includes all of its agents, independent contractors, assigns, affiliated entities, directors, employees, officers, representatives, and successors in interest.

2.05 License Fee. The sums set forth in Section 3.03.01.

## 3 LICENSE

3.01 Term. The Village hereby grants (and Licensee herby accepts) a license of the Premises, for the Permitted Use and uses set forth hereafter, to Licensee for a "Term" of five (5) years, with a "Commencement Date" of the earlier of either (a) the date that Licensee begins construction of the Antenna Facility or (b) August 1, 2020, unless Licensee notifies the Village in writing prior to the Commencement Date that it is terminating this Agreement. At midnight on the last day of the month in which the fifth, tenth, fifteenth, and twentieth anniversaries of the Commencement Date occurs, the Agreement shall automatically extend for additional, distinct and successive "Additional Terms" of five (5) years each; provided however that Licensee may give the Village

written Notice not less than sixty (60) days prior to the end of the Term or any Additional Term in order to terminate this Agreement on the last day of the Term or any applicable Additional Term. The "Total Term" shall not exceed twenty-five (25) years. It is expressly understood and agreed that all rights granted to Licensee under this Agreement are irrevocable until this Agreement expires or sooner terminates as herein provided.

The obligations of Licensee under this Agreement are expressly subject to and conditioned upon the satisfaction (or waiver in writing by Licensee) of the following conditions: receipt by Licensee of (a) all third party certificates, licenses, approvals, and permits, and (b) any other federal, state or local governmental authorizations (all of the foregoing, collectively, the "Permits") necessary for the use of the Premises by Licensee as an antenna site for the Permitted Use. In the event that (a) any of such applications should be finally rejected or any Permit issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority, (b) any structural analysis, soil boring, radio frequency propagation, or similar tests are found to be unsatisfactory so that Licensee, in its sole discretion, will be unable to use the Premises for the Permitted Use, or (c) any condition of the Premises renders it impossible or impractical for Licensee's purposes (as determined in Licensee's sole discretion), then Licensee shall have the right to terminate this Agreement effective immediately upon Village's receipt of written notice of such termination from Licensee or upon any later date specified by Licensee in the written notice. Further, Licensee may terminate this License at any time for any or no cause whatsoever by giving at least six (6) months' advance written notice to Village. All License Fees earned to said termination date shall be retained by Village. Any License Fees paid to Village, yet not earned to said termination date, shall immediately be reimbursed to Licensee. Notwithstanding the preceding sentence requiring the reimbursement to Licensee for unearned License Fees, upon such termination, this License shall be of no further force and effect and the Parties shall have no further obligations, including the payment of money, to each other.

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3.02 Plans and Specifications. Upon execution of this Agreement, Licensee shall immediately commence preparation of all plans, specifications, and drawings ("Final Specs") necessary for issuance of a building permit for the construction of the Antenna Facility. Licensee shall (a) diligently pursue and use its best efforts to prepare Final Specs and (b) submit an application for building permit on or before the expiration of one hundred eighty (180) days after Village Board approval of this Agreement. The Village shall promptly review the Final Specs and issue a building permit, if appropriate, or advise Licensee of any modifications, changes, or corrections, necessary for permit issuance. The parties shall reasonably cooperate regarding permit issuance.

3.03 Payments. All payments shall be non-refundable.

3.03.01 *Payments to Village: License Fee*. Licensee shall pay the Village an annual License Fee in the amount of _____ Dollars ($_____.00) for each year of the Term of this Agreement within thirty (30) days following the Commencement Date. Thereafter, the annual License Fee shall increase by five percent (5%) for each Additional Term.

Licensee shall pay the Village the License Fee annually for each Additional Term on or before the Commencement Date of each Additional Term. The License Fee for the Term and any Additional Terms is set forth below

Initial Term: $_____ per year

First Additional Term: $_____ per year

Second Additional Term: $_____ per year

Third Additional Term: $_____ per year

Fourth Additional Term: $_____ per year

All of Licensee's monetary obligations set forth in this Agreement are conditioned upon Licensee's receipt of an accurate and executed W-9 Form from Licensor. In the event that this Agreement is terminated for any reason prior to the conclusion of any 12-month period for which Licensee prepaid the License Fee, Village shall promptly refund such prorated portion of the prepaid License Fee which is directly proportionate to the portion of said 12-month period for which the Agreement is no longer in effect. Upon request from Licensee, Village shall provide Licensee with a completed Licensee Supplier Authorization Form, and any other documents reasonably requested by Licensee for regulatory or tax compliance purposes and (b) invoices at such intervals as Licensee requests and including a purchase order number. Both Parties acknowledge and agree that Licensee will be responsible for all payments required hereunder (except to the extent that any abatements or offsets are provided for under this ~~License~~Agreement or applicable law), but that Licensee will be unable to process payments until the above described payment documentation has been received by Licensee. Accordingly, the due dates of any payments provided for in this License may be tolled in the event that Village has not provided such payment documentation to Licensee. Village acknowledges and agrees that Licensee requires a lag time to establish Village as a vendor in its payment administration system. Accordingly, notwithstanding any License Fee due dates set forth herein, in the first year of the Initial Term, Licensee's initial License Fee payment(s) may not actually be made until the date which is ninety (90) days following the Commencement Date.

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3.03.02 *No Reduction in Payments*. No payment made by Licensee to any third party shall reduce the sums due and payable to the Village under Section 3.03.01.

3.03.03 *Payment of Expenses.* Licensee shall pay the Village a one-time additional amount of $3,000.00 for Licensee's portion of the Village's reasonable expenses related to the legal and engineering aspects of this Agreement within thirty (30) days following the Commencement Date of this Agreement. This payment does not reduce those set forth in Section 3.03.01. This payment of this amount is a precondition to the issuance of building permits by the Village to Licensee under this Agreement.

3.03.04 *Delivery of Payments and Late Payments.* The sums set forth in Section 3.03.01 shall be payable to the Village at the address set forth in Section 16. Except as provided in Section 3.03.01, Licensee shall be in default upon failure to pay such sums within ten (10) days after written notice from the Village, and Licensee shall pay the Village a late charge of five percent (5%), compounded monthly, of the overdue sum.

Upon the agreement of the Parties, Lessee may pay the License Fees by electronic funds transfer and in such event, Lessor agrees to provide Lessee bank routing information and complete the necessary electronic transfer of funds form for such purpose upon request of Licensee.

3.04 Not a Lease. This Agreement is not a lease and it does not create a tenancy of any type.

## 4 CONSTRUCTION, OPERATION AND MAINTENANCE

4.01 Construction and Installation. Village has approved ~~and agrees to~~in concept only the Plans and Specifications set forth in Exhibit C ~~& D~~. Upon full execution of this Agreement and upon securing all necessary approvals, permits, and licenses from any and all federal, state and local agencies having jurisdiction over the Antenna Facility, Property, and Premises, Licensee has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises the Antenna Facility, including but not limited to radio communications facilities, utility lines, transmission lines, an air conditioned equipment shelter(s) and/or an air conditioned equipment room in, adjacent to, or on the roof of, the Building, electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore. In connection therewith, Licensee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Licensee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers; provided, however, that such construction, installation, operation, maintenance, repair, replacement, or removal is done in accordance with this Agreement, the Plans and Specifications, the Final Specs including any amendments approved by the Village, and all applicable federal, state and local laws, statutes, regulations and ordinances.

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4.02 Deviation from Plans and Specifications. Licensee shall not at any time, whether as part of initial installation or construction or as part of any repair or replacement, vary from the Plans and Specifications, or Final Specs specifically including the design, size and configuration of the antennas as shown on the Plans and Specifications and the Final Specs, without the review and express approval of the Village Board, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Licensee may make additions, alterations or improvements to Licensee's equipment housed within any building or screened enclosure on the Premises without such Village approval; and, provided further, that Licensee may replace any or all of its antennas or equipment installed on or about the Elevated Tank with replacement equipment or antennas of a substantially similar kind, which is reinstalled in substantially the same place and position, and is of substantially the same size and weight as the replaced equipment or antennas without the need for Village approval. The Village Manager, in his

reasonable discretion, shall determine whether any activity is within a screened area of the Premises and whether replacement is substantially similar in the areas noted herein this Section 4.02. If the Village Manager finds the activity is not within a screened area or the replacement is not of a substantially similar kind, review and approval of the Village Board is required before any activities occur.

4.03 Appearance. All antennas shall be painted to match the color of the Elevated Tank and if at any time during the Term of this Agreement, including any and all Additional Terms, the Elevated Tank is repainted, then Licensee shall repaint the antennas to match the color of the repainted Elevated Tank. All wiring and antennas on or around the Elevated Tank shall be white in color.

4.04 No Conversion to Fixture. No part of the Antenna Facility shall become a fixture. The Antenna Facility and any equipment installed on the Premises shall remain the personal property of Licensee.

4.05 Limitation of Licensee's Right. Licensee has only those rights expressly provided for herein this Agreement. Licensee shall not mortgage, encumber, hypothecate or pledge as collateral, or permit to be mortgaged, encumbered, hypothecated or pleaded as collateral, any real or personal property of the Village, and Licensee shall indemnify and hold the Village harmless from the same, including any reasonable attorneys' fees and expenses. In the event any Mechanic's Liens or similar encumbrances are recorded against the Property as a consequence of any work performed by Licensee, Licensee shall promptly cause the same to be removed or post with the Village a cash bond, for the benefit of the Village, in that order of priority, equal to One Hundred Fifty Percent (150%) of the amount of the lien or encumbrance. Licensee shall have the right to contest the validity, nature or amount of any such lien, but upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. Notwithstanding the above, Licensee shall have the right to pledge its own personal property as collateral and may have appropriate *UCC* financing statements and fixture filings filed or recorded as necessary to perfect such security interests.

4.06 Waiver of Licensor's Lien. Village hereby waives any and all lien rights it may have, statutory or otherwise concerning the Antenna Facility or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Village gives Licensee and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Licensee's and/or Mortgagee's sole discretion and without Village's consent.

4.07 Maintenance, Safety, and Workmanship. The Antenna Facility shall be constructed, installed, operated, maintained, repaired, replaced or removed by Licensee in a good, safe and workmanlike manner consistent with good engineering practices and all applicable laws and regulations. Licensee shall maintain the Antenna Facility in good repair, and in a clean and slightly condition.

4.08 Failure to Maintain Safety, Workmanship, and Sightliness. In the event Licensee fails to maintain, repair, replace, or remove the Antenna Facility or any portion thereof in accordance with this Agreement, the Village may do so at the sole expense of the Licensee; provided that, prior to making any such maintenance, repairs, replacement, or removal, the Village shall provide Licensee fifteen (15) days advance written notice in order to permit Licensee to comply with this Section 4.08 or to present the Village with a plan for compliance acceptable to the Village Manager. This notice requirement shall not apply in the event of an emergency. Pursuant to this Section 4.08 herein, any and all costs, fees, and expenses for the construction, installation, operation, maintenance, repair, replacement, or removal of the Antenna Facility shall be the sole and exclusive responsibility of Licensee, whether work was performed by Licensee and its agents or the Village and the Village's agents.

4.09 Restoration and Removal. Immediately upon completion of the construction of the Antenna Facility, Licensee shall restore any areas of the Premises or the Property damaged or disturbed by its construction to its condition immediately preceding access by the Licensee to the Premises. Within ninety (90) days following termination of this Agreement, Licensee shall restore the Premises, the Elevated Tank, and the Property which was impacted in any way (casualty, reasonable wear and tear excepted therefrom) by the Antenna Facility or any use of the Premises, and the Elevated Tank for purposes related to the Antenna Facility, all as provided for in other paragraphs of this Agreement. Within ninety (90) days following termination of this Agreement, or its earlier termination or cancellation for any reason, Licensee shall, at its sole expense, remove from the Premises its Antenna Facility, and Licensee shall repair any damage to and fully restore the Premises, the Elevated Tank, and the Property resulting from any installation, maintenance, repair, operation, use and/or removal of the Antenna Facilities, casualty and ordinary wear and tear occurring even in the absence of the Antenna Facility excepted. Any other items of Licensee's property that shall remain on the Property after the expiration or following an earlier termination date, may, at the option of the Village, be deemed to have been abandoned, and in such case, such items may be retained by the Village as its property or be disposed of by the Village, without accountability to the Village, in such a manner as the Village in its sole and absolute discretion shall determine. Removal, restoration and disposal shall be at Licensee's expense regardless of who performs the work.

## 5 PERMITTED USE

5.01 Use Generally. Licensee shall use the Premises for any lawful activity in connection with the provision of installing, maintaining, and operating a communications facility and uses incidental thereto, including, without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities ("Permitted Use"). Such Permitted Use includes any additional blanket easements and rights as are necessary to Licensee's use of the ~~Tower~~Antenna Facilities (e.g. to make physical connections between Licensee's antennas and Licensee's ground facilities located on the Premises, the installation of metering rack and similar).

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5.02 Compliance with Laws. Such use shall be in full compliance with this Agreement and with all applicable federal, state and local laws, regulations, ordinances and licenses, including without limitation building, life/safety, disability, wage and hour, and labor laws and regulations

and any regulations and licenses of the Federal Communications Commission ("FCC") or any successor agency.

5.03 Non-Interference. Licensee shall not, except as permitted by this Agreement, use the Premises in any way which interferes with Village Operations, including but not limited to the Village's principal use of the Elevated Tank as a water storage facility and as an antenna and communications site for the Westmont Police Department. To the extent Licensee fails to comply with this Section 5.03 after notice of default and an opportunity to cure as set forth in this Agreement, the Licensee shall immediately suspend Antenna Facility operations.

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5.04 Village Management of the Premises. At all times, the Village shall, in its sole and absolute discretion, have the right to operate, maintain, paint, repair, and replace ("Village Work") any of its existing facilities, including the Elevated Tank and police communications equipment. Licensee shall cooperate with the Village to allow the Village Work to occur. Whenever necessary to accommodate the Village Work, Licensee shall have the right to install a temporary antenna on Property without further approval of the Village Board. Any expense, loss, or inconvenience sustained by Licensee as a consequence of the Village Work shall be the sole and exclusive responsibility of Licensee, except to the extent caused by the negligent or intentional acts or omissions of the Village, or any of their respective employees or agents. Except in the event of any emergency repairs, prior to the commencement of any work by the Village which is in the immediate vicinity of Licensee's antenna installation, or which may require the cooperation and presence of Licensee's personnel, the Village shall give Licensee written notice no later than ninety (90) days prior to the commencement of Village Work. Notwithstanding anything contained herein to the contrary, in no event shall Village Work be performed more than once every five (5) years during the Term of this Agreement. As of the Effective Date Village has no planned Village Work in 2020.

**Comment [JZ1]:** I am waiting for confirmation from Village staff as to this statement.

5.05 New Uses. The Village shall not permit new uses of the Premises, except as may occur under Paragraph 8 below, that in any manner cause interference with Licensee's operations or Interference as defined in Section 6. The Village agrees to notify Licensee of any intended installation on the Premises in order for Licensee, at Licensee's expense, to assist the Village in determining whether such use will (a) cause any interference with the transmission or receipt of radio signals to Licensee's antenna or (b) unreasonably impair Licensee's ability to construct, operate, maintain, replace, or remove the Antenna Facility.

## 6 BROADCAST INTERFERENCE

6.01 Interference. As used in this Agreement, "Interference" with a broadcasting activity means:

6.01.01 Interference within the meaning of the provisions of the recommended practices of the Electronics Industries Association (ElA) and the rules and regulations of the Federal Communications Commission (FCC) then in effect; or

6.01.02 A material impairment of the quality of either sound or picture signals on a broadcasting activity as may be defined by the FCC at any hour during the period of

operation or activity, as compared with that which would be obtained if no other broadcaster were broadcasting from the Premises or had any equipment on the Premises.

6.02 Representation and Warranty. In the event there is interference with the existing police department communications equipment, or such equipment as it may be repaired, upgraded, or replaced during the Term or any Additional Tern, Licensee shall eliminate such interference. Upon Licensee's failure to do so within thirty (30) days after Licensee has actual notice of the interference and, if there is no actual notice, within thirty (30) days after the Village notifies tenant of such interference, Licensee shall immediately suspend Antenna Facility operations and in the event such interference cannot be reasonably abated Licensee shall have the right to terminate this Agreement..

6.03 Interference Forbidden.

6.03.01 Licensee shall operate the Antenna Facilities in a manner that will not cause physical, mechanical, radio frequency or signal interference to Village and other licensees of the Property, provided that such other licensees' installation predates the installation of the Antenna Facility and provided that this prior installation may be reasonably expanded, repaired, maintained, upgraded and replaced pursuant to those agreements which predate this Agreement. All operations by Licensee shall be in compliance with all Federal Communication Commission ("FCC") requirements.

6.03.02 Subject to Section 5.05 and Section 8, the Village may enter into any new license, lease, or agreement to allow another person or entity to use any portion of the Premises.

6.03.03 Subsequent to the installation of the Antenna Facility, Licensor will not, and will not permit its other licensees to install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by Licensor, if such modifications cause interference with Licensee's operations. In the event interference occurs, Licensor agrees to use best efforts to eliminate such interference in a reasonable time period. Licensor's failure to comply with this paragraph shall be a material breach of this Agreement.

6.04 Remedy in the Event of Interference. In the event any signal interference in violation of this Section 6 is caused by the Licensee, the Village, or any third party, and said interference is not eliminated within thirty (30) days of the giving of written notice to the person or entity responsible for the interference, Licensee, and Village, Licensee may (a) take such reasonable steps as are necessary to remedy the signal interference at the expense of the person or entity responsible for the signal interference or (b) notify the Village and require the Village to notify and compel the remedying of the signal interference by the responsible party to the extent the Village may lawfully do so. If, within forty-five (45) days, the interference with the Licensee's signal is not remedied under either of the aforementioned options, then Licensee may terminate this Agreement.

## 7 CASUALTY OR CONDEMNATION

7.01 Termination. In the event of any damage, or destruction to the Premises which renders the Premises unusable or inoperable for Licensee's Permitted Use, Licensee shall have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations herein. No later than thirty (30) days prior to the date of termination, Licensee shall provide written notice of the termination to the Village, *provided* that termination shall not occur unless by virtue of such casualty, (a) the Premises are no longer adequate for Licensee to continue its operation within sixty (60) days of said casualty event or (b) substantial repairs to the Premises cannot reasonably be completed within sixty (60) days from the date of the damage.

7.02 Repairs in Lieu of Termination. If Licensee does not terminate this Agreement, within sixty (60) days from the date of such damage or destruction and related solely to the event causing damage or destruction, the Village shall substantially complete repairs to the Premises necessary to permit Licensee's use of the Premises for the Antenna Facility, but only to the extent that the Village has received insurance proceeds with respect to damage or destruction to the Premises. The Village's obligation to make repairs to the Premises shall be limited to the amount of said insurance proceeds if any and in the event that such proceeds are not adequate to make all necessary repairs, the Village may elect to forego repair of the Premises or choose to repair the Premises with other funds. If Licensee chooses not to terminate this Agreement pursuant to Section 7.01, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises, retroactive to the date of such damage or destruction.

7.03 Condemnation. In the event of condemnation, if Licensee determines in its sole discretion that, as a result of said condemnation, Licensee is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days,, Licensee may terminate this Agreement as of the date title to the Property vests in the condemning authority or Licensee is required to cease its operations, whichever is earlier. Licensee shall be entitled to share in the proceeds of any condemnation award, and Licensee's share shall be limited to the value of the Antenna Facility which is transferred to the condemning authority, and for relocation and moving expense. If Licensee does not terminate this Agreement, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

## 8 RELOCATION OF LICENSEE FACILITIES

8.01 Village's Reservation. The Village reserves and retains the right to raze or replace the Elevated Tank at the same or a new location on the Property. In the event the Village chooses to raze or replace the Elevated Tank, the Village may, at any time during the Term or any Additional Term require Licensee to change the location of the Antenna Facilities on Exhibit "C" to a substantially similar area on the Property (the "New Location") provided that the New Location is oriented in the same direction, is at the same height as the original location, and meets all of the Plans and Specifications and is acceptable to Licensee, and also provided that Licensee's use at the Premises is not interrupted or diminished during said relocation. In the event that the New Location is not reasonably acceptable to Licensee, (in Licensee's sole and

absolute discretion), for the operation of its Antenna Facilities, Licensee shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Village. Notwithstanding anything contained to the contrary herein, in no event shall Licensee be required to relocate the Antenna Facilities more than once in any ten (10) year time period during the Term of this Agreement.

8.02 Notice. The Village shall give Licensee no less than twelve (12) months prior written notice of the Village's exercise of its relocation right under this section. Village represents to Licensee, that as of the Effective Date, the Village has no current plan to raze or replace the Elevated Tank.

**Comment [JZ2]:** I am waiting for a response from Village staff as to this statement.

8.03 Cooperation and Reimbursement. Subject to Licensee's right to terminate in Section 8.01, Licensee shall cooperate with the Village, in all reasonable respects, so as to facilitate Licensee's relocation to the New Location. The Village shall reimburse Licensee for any expense incurred to relocate Licensee's Antenna Facility, including but not limited to, the cost of obtaining and maintaining any necessary governmental approvals, permits or authorization from the Village and running structural reports.

8.04 Effect of Relocation. The relocation of the Antenna Facilities to the New Location shall not cause the amounts payable under this Agreement to be abated or increased. Upon the relocation of the Antenna Facilities, all references in this Agreement to the Premises shall be deemed to be references to the New Location.

## 9 SITE ACCESS

9.01 Utilities. **[[JOHN/WESTMONT: This section open: My understanding is that the Village will have Nicor access a breaker in an existing elec panel for elec power (?). In such case, assume would elec would not be separately metered and thus Village would be supplying elec (?)]**The Village shall permit access across the Premises for all necessary utilities. Access for utilities shall be had only in the locations depicted in Exhibit "C". All utilities shall be installed underground in locations approved by the Village. Licensee shall pay for and hold the Village harmless for the cost of utilities used for the operation of the Antenna Facility at rates charged by the servicing utility.

**Comment [JZ3]:** I am waiting for a response from Village staff as to this statement.

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9.02 Access to Premises Generally. Licensee shall have the right to ingress and egress across the Premises from the Wilmette Avenue entrance to the Premises as depicted in Exhibit "B". Licensee shall be permitted to park a vehicle within the Premises for temporary servicing and maintenance only. Licensee shall be permitted access across, upon and under the Premises at all reasonable times for purposes of constructing, installing, operating, maintaining, repairing, replacing or removing ("Licensee's Work") the Antenna Facility, provided however that Licensee shall have free access to the Premises and Antenna Facility twenty-four (24) hours a day, seven (7) days a week for operating and maintenance purposes. Whenever Licensee or its agents, employees, or contractors, desire(s) to access the Premises, Licensees shall first notify the Village of Westmont Police Department at the regular non-emergency telephone number (630/ 981-6300). The notification shall include the number of persons, the purpose of being present on Site, the approximate number of hours Licensee will be present, and the names of the

individuals or the name of the contractor. All persons accessing the site on behalf of Licensee shall have proper identification.

9.03 The Village expressly acknowledges and agrees that Licensee provides its services at all times, even in times of power failure, natural disaster, civil commotion, and other emergencies. Accordingly, Village expressly acknowledges and agrees that it will do nothing to interfere with Licensee's access to the Premises in order to maintain, operate and repair the Antenna Facility. In the event Village fails to comply with this paragraph, Licensee may terminate this Agreement and/or pursue any other remedies available under this Agreement at law and/or at equity.

## 10 INSURANCE

10.01 Licensee's Obligation. **[[[OPEN: NICOR RISK]]]**Licensee shall procure and maintain or cause to be procured and maintained, with respect to the Antenna Facility and all of Licensee's Work to be performed on the Premises, whether by Licensee or its contractors, agents or employees, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of Licensee's Work by Licensee, its contractors, agents, representatives, employees or subcontractors.

**Comment [JZ4]:** What is the concern with these insurance requirements? I don't understand the comment "Nicor Risk."

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10.02 Insurance Requirements.

10.02.01 *Scope and Limits.* Licensee's insurance shall provide the following minimum scope of insurance and minimum insurance limits.

1. Workers compensation insurance as required by the Labor Code of the State of Illinois.

2. Employer's liability insurance of $1,000,000 each accident/disease/policy limit.

3. Builder's risk insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Project, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement.

4. Fire and casualty insurance for the Antenna Facility in an amount not less than one hundred percent (100%) of the replacement cost of the Antenna Facility.

5. Commercial Automobile Liability insurance covering all owned, non-owned and hired vehicles in the amount of $1,000,000 combined single limit each accident for bodily injury and property damage.

6. Commercial General Liability in the amount of $1,000,000 per occurrence for bodily injury and property damage and $1,000,000 general aggregate (including

but not limited to, personal injury, blanket contractual liability, products and completed operations, and explosion, collapse and damage to underground property).

10.02.02 *Endorsements.* Licensee's insurance shall also contain the following;

1. The Village will be included as an additional insured as their interests may appear on the commercial general liability and automobile liability as respects all work performed under this Agreement;

2. The insurance procured pursuant to the provisions of this paragraph shall be primary and non-contributory with any insurance program of self-insurance that may be maintained by the Village;

3. Any insurance or self-insurance maintained by the Village shall be excess of the insurance procured by or on behalf of Licensee and shall not contribute to or with such Licensee's insurance;

4. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Village, and each of their officials, agents, employees and volunteers; and each policy required by this paragraph shall be endorsed to state that thirty (30) days' prior written notice by regular mail or personal delivery of cancelation or nonrenewal must be to:

The Village: Village Manager
Village of Westmont
31 W. Quincy Street
Westmont, IL 60559

All policies obtained and continued hereunder shall be underwritten by a company or companies authorized to do business in Illinois and shall be reasonably satisfactory to the Village.

10.03 Certificates of Insurance. Licensee shall furnish or cause to be furnished to the Village certificates of insurance and blanket additional insurance endorsements evidencing all coverage required by this paragraph. The certificates and endorsements are to be received and approved by the Village before the commencement of any construction or other Licensee Work. Thereafter, such certificates and endorsements are to be delivered to the Village with each annual payment to the Village.

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10.04 Village Insurance. The Village shall be responsible for obtaining and maintaining its own general casualty insurance coverage for the Elevated Tank and any other improvements or property owned by the Village.

## 11 TAXES

11.01 Personal Property Taxes: Licensee shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

11.02 Taxes Upon the Property. Except as provided below in this Section 11.02, Licensee shall not be responsible for any real estate, special assessments or similar taxes relating to the Premises, or Property except to the extent permitted or required by statute for the value of Licensee's rights. The Village currently enjoys tax-exempt status. Should the tax exemption status of the Village change due to the presence of Licensee, Licensee shall have the right to either (a) have a separate tax parcel covering its installation created, and thereafter pay all personal property and real estate taxes associated with the newly created tax parcel, or (b) pay its pro rata share of such taxes, subject to its right of challenge in Section 11.04 below.

11.03 Indemnification. Further, should the tax exemption status of the Village change due to the presence of Licensee, Licensee shall indemnify and hold harmless the Village for any real estate tax assessed to or paid by Village relating to the Premises, or Property, to the extent which is attributable to Licensee's use.

11.04 Challenges. Licensee shall have the right to contest all taxes, assessments, charges, and impositions, and the Village agrees to join in such contest, if required by law, and to permit Licensee to proceed with the contest in the name of the Village, provided that the expense of the contest is borne by Licensee. If the Village initiates an action to contest taxes or other items, Licensee may join in such action provided that Licensee pays its own expenses of so participating.

11.05 Right to Notice. The Village shall, within ten (10) days of receipt of a notice of any imposition or increase in taxes, assessments or other charges, send a copy of such notice to Licensee. Licensee reserves the right and Village hereby authorizes Licensee to obtain a copy of any tax or assessment bill from the appropriate government offices. Upon request, the Village will execute or join in any application necessary to have originals or copies of tax and assessment bills sent to Licensee and the Village.

## 12 ESTOPPEL CERTIFICATES

During the Term of this License, either party shall, upon thirty (30) days prior written notice requested by the other, deliver to the requesting party a statement in writing certifying that this License is unmodified and in full force and effect (or if modified, in effect as modified and setting forth the modifications and the dates of the modifications), the dates to which rent and other charges have been paid and stating whether or not, to the knowledge of the party delivering the certificate, the requesting party is in default in performance of any term or agreement contained in this License, and, if so, specifying each default and whether there are any counterclaims.

## 13 SAFETY AND STRUCTURAL WORK ACT

It is understood and agreed that, with respect to the Antenna Facility and Licensee's conduct on the Premises, including but not limited to all aspects of site health and safety,

Licensee is responsible for the safe performance by Licensee's personnel, representatives, agents, and contractors of their activities in performance of the services related to the Antenna Facility ("Project"). It is expressly agreed that the conduct and obligations of the Village hereunder do not involve any responsibility for the protection and safety of persons on and about the Premises, except to the extent that such persons are employees, contractors, or agents of the Village, nor is the Village to review the adequacy of job safety on the Project. It is further understood and agreed and not in limitation of the foregoing that, except for negligent or intentional conduct by the Village or its employees, agents and volunteers, the Village shall not be in charge of, and/or shall not have control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation or ordinance relating in any way to Project safety.

## 14 ENVIRONMENTAL SOUNDNESS

14.01 Hazardous Material Defined. For purposes of this Agreement, "Hazardous Material" includes any hazardous, toxic or dangerous waste, substance or material defined as in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, or so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

14.02 Hazardous Materials Forbidden. No party to this Agreement shall generate or store any Hazardous Materials on or about the Premises or Property, except that the Village may do so in compliance with applicable laws and regulations and with prior notice to Licensee, and the Licensee may use those materials necessary in the ordinary course of its business, including but not limited to batteries, deminimis quantities of cleaning solvents, and natural gas for a temporary generator, provided the natural gas is provided via a fixed line. Any temporary generator installed shall have a residential-level exhaust muffler installed and shall be removed upon termination of this Agreement by Licensee and shall be tested no more than once per week at such times during the day recommended by Licensor.

14.03 Village's Representation. Neither the Village nor, to the best knowledge of the Village, any other person has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof. No portion of the Premises has ever been used by the Village or to the best knowledge of the Village, by another person either as a permanent or temporary dump site or storage site for any Hazardous Material, unless such Hazardous Material was stored in compliance with the law.

## 15 INDEMNIFICATION

15.01 Licensee's Indemnity. Licensee shall defend, protect, indemnify, and hold the Village harmless from and against any and all losses, liabilities, damages, injuries (including death), costs, expenses and claims of any and every kind whatsoever including court costs, expert fees, and reasonable attorneys' fees, paid, incurred or suffered by or asserted against Village for, with

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respect to, or as a direct or indirect result of (a) the construction, installation, operation and maintenance of the Antenna Facility, (b) any conduct by Licensee related to or arising under this Agreement all of both (a) and (b) to the extent such loss, injury, death, or damage is caused by the negligence or willful misconduct of Licensee or its respective agents, employees, or contractors, except to the extent such claims or damages are caused by the negligence or willful misconduct of Village and/or its respective agents, employees, or contractors.

15.02 Village Indemnity. The Village shall defend, protect, indemnify, and hold Licensee harmless from and against any and all losses, liabilities, damages, injuries (including death), costs, expenses and claims of any and every kind whatsoever, including without limitation court costs, expert fees, and reasonable attorneys' fees, paid, incurred or suffered by or asserted against Licensee for, with respect to, or as a direct or indirect result of ( 1) the Village or its agents, employees, or contractors related to or arising as a result of Village Operations and (2) any conduct by ~~Licensee~~Village related to or arising under this Agreement all of both (1) and (2) to the extent such loss, injury, death, or damage is caused by the negligence or willful misconduct of Village or its respective agents, employees, or contractors, except to the extent such claims or damages are caused by the negligence or willful misconduct of Licensee and/or its respective agents, employees, or contractors.

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15.03 Village shall hold Licensee harmless from and indemnify Licensee against and from (a) any damage, loss, expenses or liability resulting from any violation by Village or its tenants, other licensees, agents, invitees or contractors of any federal, state or local environmental statute or other law, and (b) the presence, in, on, under or upon the Property, of any hazardous material (which shall mean any hazardous waste, hazardous substance or toxic substance or material defined, regulated, controlled, limited, or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq*.) which is not introduced by Licensee or its agents, invitees, or contractors. Licensee shall hold Village harmless from and indemnify Village from and against any damage, loss, expense or liability resulting from any violation by Licensee or its agents, invitees or contractors of any federal, state or local environmental statute or other law, after the Commencement Date hereof, in, on, under or upon the Property.

15.03 Limitation of Indemnification and Remedy. Except for the obligation to indemnify for a third party claim as set forth above, under no circumstances shall either party to this Agreement be entitled to damages, restitution, payment, or indemnification of and for any lost profits or any similar remedy seeking to recover lost income, revenues, salary, benefits, profits, or other consequential damages, in any form or manner.

## 16 MISCELLANEOUS PROVISIONS

16.01 [Intentionally deleted.]

16.02 Cooperation. The Village and Licensee agree to take all steps reasonably necessary or appropriate to carry out the terms of this Agreement to aid and assist the other party, including enacting such resolutions and ordinances and taking such other actions as may be reasonably

necessary or desirable to enable the parties to comply with and give effect to the terms of this Agreement.

16.03 Binding Upon Successors. This Agreement shall inure to the benefit of and be binding upon the successors to Licensee and its respective successors, grantees, licensees and assigns, and upon successor corporate authorities of the Village and each of its respective successor municipalities or entities.

16.04 Assignment. Licensee may not assign, or otherwise transfer all or any part of its interest in the Agreement or in the Premises without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Licensee may assign this Agreement to a parent, affiliate, subsidiary or purchaser of all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Property is located upon written notice to the Village. The Village may assign this Agreement upon written notice to Licensee, subject to the assignee assuming all of the Village's obligations herein.

16.05 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, or portions of this Agreement and, to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable.

16.06 Termination. In addition to termination as a result of action or inaction pursuant to other paragraphs of this Agreement, Licensee may terminate this Agreement, without further liability, on thirty (30) days' written notice if: (a) Licensee through no fault or negligence of its own is unable to obtain or loses any governmental approval necessary to construct or use the Antenna Facility, or (b) the Premises, in Licensee's good faith judgment, are or become unacceptable or unusable under Licensee's then current design or engineering specifications for the Antenna Facility or the Permitted Use. Upon termination of this Agreement, Licensee shall remove all antennas, equipment, buildings and structures and restore the Elevated Tank, the Property, and the Premises as provided in Section 4.09 above. Regardless of any other provision of this Agreement, the Village may terminate this Agreement immediately upon notice to Licensee, and the Licensee shall immediately cease all uses of the Premises, if the Village determines and documents that the Antenna Facility presents an immediate and serious danger to the health, safety, or welfare of the public due to structural deficiencies evidenced by a report from a certified structural engineer or due to the operation of the Antenna Facility outside of the FCC regulations currently in place at the time of the violation.

16.07 Survival. Sections 4, 6, 11, 13, 14, 15, and 16 shall survive termination of this Agreement and no event shall reduce or mitigate the obligations of or benefits to any party under these provisions of this Agreement.

16.08 Default. Upon the occurrence of any default under this Agreement, the non-defaulting party shall provide written notice of the default to the defaulting party, and the defaulting party shall thereafter have thirty (30) days to cure any such default, provided that the defaulting party

shall have such extended period as may be required beyond the thirty (30) days, if such an extension is granted by the Village Manager or Licensee (as applicable to the non-defaulting party), which extension shall not be unreasonably refused, if the nature of the cure is such that it reasonably requires more than thirty (30) days and the defaulting party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. In the event the default is not cured or has not commenced to be cured within said thirty (30) day period or extended period as may be required, the non-defaulting party may pursue an appropriate remedy under Section 16.09 of this Agreement.

16.09 Remedies. In the event that the use of the Premises is interfered with, in violation of this Agreement then the party whose use is being interfered with shall be entitled to all remedies at law or equity, including the equitable remedy of injunction. The prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees, court costs, and reasonable costs of litigation, including but not limited to experts' or consultants' fees.

16.09.01 *Equitable Remedies.* The parties agree that such interference shall constitute irreparable harm, that there is no legal remedy which could adequately protect the non-defaulting party's interests in the Premises. Further, the balance of public interest favors the continued use of the Premises, in accordance with the terms of this Agreement, by all parties to this Agreement.

16.09.02 *Legal Remedies.* A non-defaulting party shall have all of remedies at law, with the sole limitation being that no party shall be liable for lost taxes, lost revenues, lost profits, lost income, loss in property value, or any other prospective or other business loss.

16.10 Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois according to the fair meaning of the language and shall not be strictly construed against either party.

16.11 Complete Agreement. This Site License Agreement contains all agreements, promises and understandings between the Village and Licensee. Time is of the essence of this License, and of each and every covenant, term, condition and provision hereof.

16.12 Notices. All payments, notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, to the following addresses:

The Village: Village Manager
Village of Westmont
31 W. Quincy
Westmont, IL 60559

If to Licensee:

Nicor Gas Company
1844 Ferry Road
Naperville, IL 60563
Attn: Legal Dept AMI Tower Support

With a copy to:
Nicor Gas Company
1844 Ferry Road
Naperville, IL 60563
Attn: Office of the Vice President, Business Support

Notices delivered to these persons and addresses shall be deemed effective on the date of personal delivery, as properly certified, if delivered personally or on the date of delivery reflected in the return receipt if delivered by certified United States Mail, FedEx, or other reputable carrier. If there is any change in designation or address, the party experiencing the change shall notify the other parties of the change. Notice shall be appropriately delivered to the above addresses until such time as any party provides such notice of a change.

16.13 Paragraph Headings. Titles of the several parts, paragraphs, or sections of this agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any provision.

16.14 Choice of Venue. Any dispute between the parties arising under or related to this Agreement shall be determined by a court of proper jurisdiction and venue within the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois; *provided* however that if federal jurisdiction over the issue is exclusive then such dispute shall be determined in the United States District Court for the Northern District of Illinois, Eastern Division. No party shall elect to remove this action from state to federal court or try to transfer this action from any of the courts mentioned herein.

16.15 Title and Quiet Enjoyment. Licensor represents and warrants that (a) it has full right, power, and authority to execute this Agreement, (b) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Licensor to enter into this Agreement and allow Licensee to install and operate the Antenna Facility on the Premises, including without limitation, approvals and consents as may be necessary from other Licensees, licensees and occupants of the Property, (c) that Licensee shall have quiet and peaceable possession of the Premises throughout the Agreement term and (d) to the best of the Village's information and belief, the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

16.16 Village shall comply, at Village's sole cost and expense, with all tower marking and lighting requirements as well as any other requirements of the Federal Aviation Administration and the Federal Communications Commission to the extent not caused by or resulting from Licensee's Antenna Facility. To the extent such tower marking and/or lighting requirements are caused by or result from Licensee's Antenna Facility, then the Village shall comply with such tower marking

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and/or lighting requirements at the Village's initial expense, and the Licensee shall reimburse the Village for such expenses within thirty (30) days of Licensee's receipt of an invoice from the Village for such work. Village hereby agrees to and does indemnify and hold Licensee harmless from and against any and all fines, penalties, claims, causes of action, suits, costs, and expenses (including, without limitation, attorneys' fees and courts costs) caused by or resulting from Village's failure to comply with such requirements.

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16.17 Village, at Village's sole cost and expense, shall (a) obtain and maintain any and all permits required of the Village for the Property and the operation thereof and shall renew same prior to expiration throughout the term of this License, (b) maintain the Premises facilities in good order and repair (including, without limitation, all necessary replacements).

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16.18 Each Party is permitted to execute this Agreement in multiple counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Each Party is permitted to deliver this License to the other party by means of delivery of one or more counterpart signature pages via facsimile or other electronic means as an attachment in portable document format (".pdf") or other similar format. Any photographic copy, photocopy or similar reproduction of this License, any License delivered by facsimile, in each case with all signatures reproduced on one or more sets of signatures pages, will be considered as if it were manually executed.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Personal Communications System Site License Agreement on the dates noted in each signature block below, the latest of which shall be deemed the Effective Date.

**VILLAGE OF WESTMONT**
an Illinois municipal corporation

By:_____
Ronald J. Gunther, Mayor

Attest: _____
Virginia Szymski, Village Clerk

Date: _____

**LICENSEE**
Northern Illinois Gas Company, d/b/a
Nicor Gas Company, an Illinois corporation

By:_____

Its:_____

Date:_____

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT "B"**

**DEPICTION OF PROPERTY**

**EXHIBIT "C"**

**DEPICTION OF LICENSED PREMISES**
**AND**
**SITE PLAN AND ENGINEERING**

| | |
|---|---|
| AGENDA NUMBER: | 1 |
| CASE NUMBER: | PZC 19-028 |
| TYPE: | COMPREHENSIVE PLAN AMENDMENT |

# Board of Trustees Memorandum March 12, 2020

**For Consideration:**
The Planning and Zoning Commission recommends approval of the following:

1. Amend the Existing and Proposed Land Use Maps of the Adopted Comprehensive Plan (2013).

**Recommended Actions**:
Approval.

## I. Basis of Recommendation

### A. Background

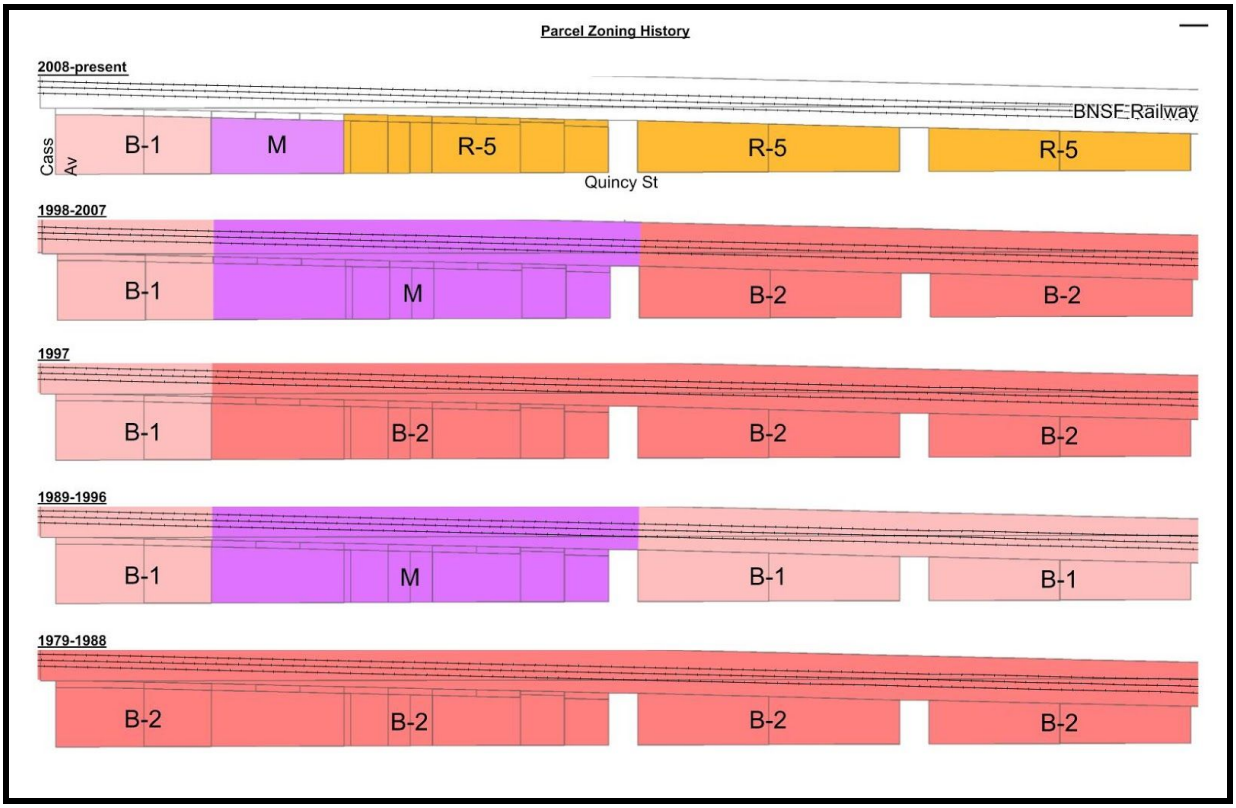
The East Quincy Corridor is made up of a core mix of business, public, institutional and government uses, such as the Westmont Chamber of Commerce, Township Highways property, Westmont Park District and Westmont School District Offices, Bales Lumber and Supply, IGE, Griffith Landscaping, and Kaybee Building Corp. At one point, the area was targeted as a future mixed-use area, containing a portion of downtown (these properties include Bales Ace Hardware and Westmont Centre), and high density residential uses (the properties to the east of Bales Lumber). A Transit Oriented Development (TOD) Study was developed in 2016 following the adoption of the Downtown Subarea Plan, as part of the adopted 2013 Comprehensive Plan.

These documents indicate a desire to change, as the Subarea plan states, the "three-block area east of Cass Avenue currently hosting secondary retail, limited industrial, or public works uses that can transform over time into Downtown supportive housing, mixed-use,

and/or Downtown square."

In this traditionally accepted scenario, the Westmont Public Works properties to the north of the BNSF railway line, as well as the Westmont Park District and Township Highway Properties on Quincy Avenue, would be relocated in order to welcome high density residential. For this reason, the area was rezoned to R-5 (General Residence), with some properties remaining Manufacturing and Limited Business (Ace Hardware and Westmont Centre).

**Aerial map with owner information, existing land uses and current zoning districts**




**Historical zoning districts**

B. Critical Issues

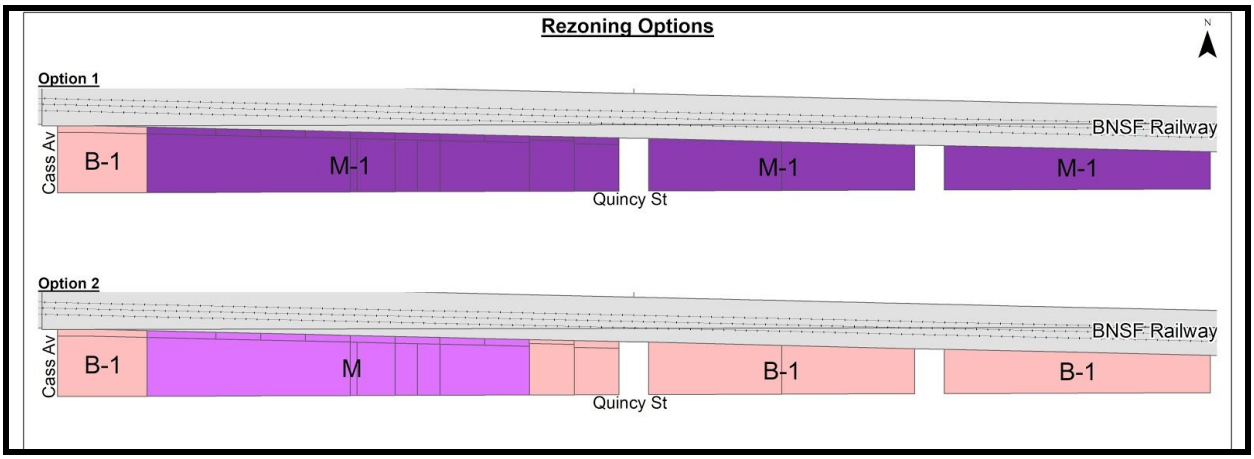
Over time, it has become clear that a combination of policy and market factors is not supporting a move to high density residential at this precise location. Most recently, a brand new Public Works facility is under construction north of the BNSF rail lines, further establishing the existing public sector uses as more permanent in nature. Additionally, a review of the environmental issues in the area, and the market requirements that would support high density housing along the edge of the railroad lines, paint a picture conducive to fortifying the established uses.

Current stakeholder discussions indicate that the history of the area as industrial in nature, with closely related uses, continue to find support through policy documents, such as the Comprehensive Plan, and implementation tools, such as through the zoning map.

The Community Development Department was charged with the task of developing a limited number of scenarios as the basis for a rezone initiative for this corridor. This rezone initiative is limited to the area along the north side of East Quincy Street, bounded by Cass Avenue to the West and Richmond Avenue to the East (Village Limits).

The following are some options and scenarios that have been discussed by staff, the Village

**Preferred Option:**




**Options based on discussions with the Village Attorney on November 21, 2019. Option 1 was recommended by staff and approved by the Economic Development Committee on December 4, 2019, and by the Planning and Zoning Commission at the February 8, 2020 Public Hearing.**

While a full analysis of the factors that have yielded to this reality is beyond the scope of this report, the Village has determined that it must act quickly to preserve and conserve the current mix of uses along this portion of East Quincy. In order to do so, a two pronged approach has been adopted by consensus:

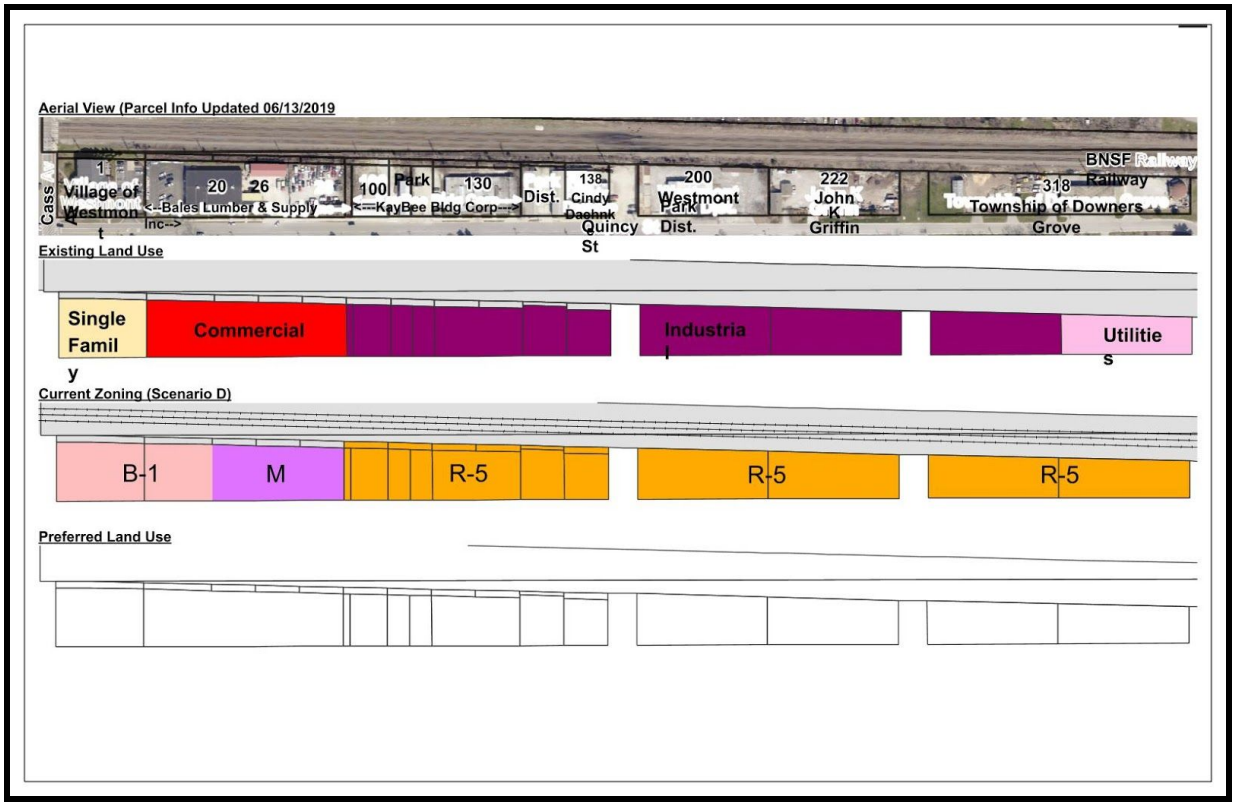
1. Creating a new limited industrial zoning district, and
2. Applying this new zoning district to existing uses along the corridor.

C. Recommendations

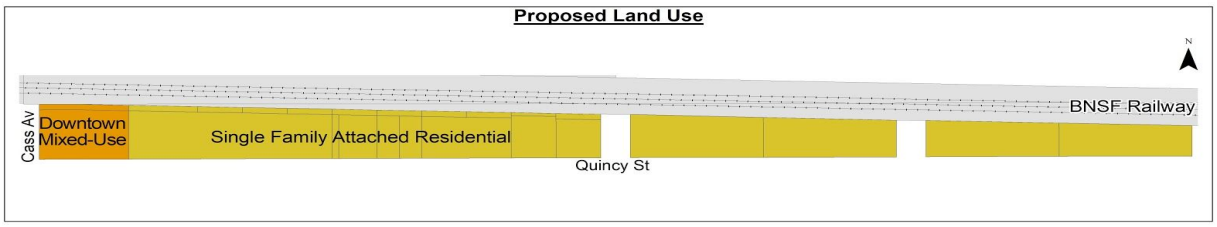
1. The Comprehensive Plan identified multi-family residential through the Proposed Land Use Map, as well as mixed-use zoning, though Subarea Plans Chapter 8. This discrepancy needs to be corrected to reflect the desire in the area to maintain the historical identity of the manufacturing uses along the corridor. Components of the Comprehensive Plan, such as the Subarea plan for the Central Business District, along with the Existing and Proposed Land Use Maps, will be amended as a preliminary step to the creation of a new zoning district to implement the planning orientations inherent in these documents.
2. Create a M-1 Limited Manufacturing District that provides for more compatible manufacturing-friendly uses, while discouraging expansion of existing uses and encouraging compatible uses to allow all present and future uses to co-exist. This proposal recognizes that the uses along the East Quincy corridor are not heavy industrial uses. Instead, they are low impact industrial uses, compatible

with the surrounding residential districts. Through discussions with the Village Attorney, staff determined that a viable option would be to create a limited manufacturing zoning district that would bring together industrial type uses that are compatible and that can co-exist with residential districts, such as the East Quincy corridor's north-facing properties along the south.

Below is a map showing existing land uses uses and current zoning:

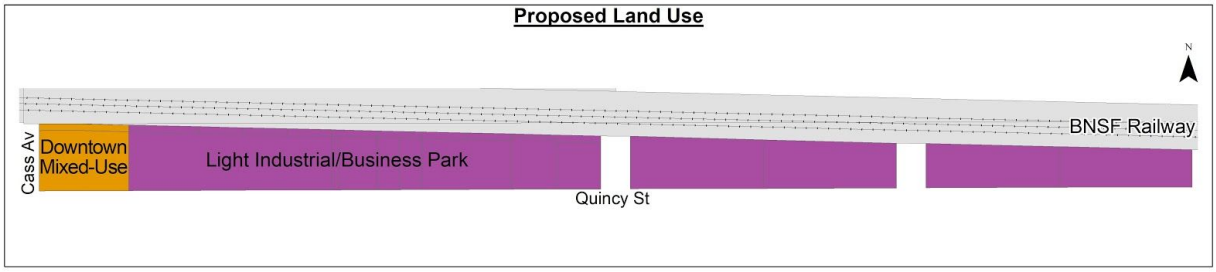



In order to remove the R-5 zoning for these properties, we first need to amend the Comprehensive Plan's Proposed Land Use Map, below:




**Proposed Land Use - 2013 Comprehensive Plan**

The proposed Land Use Map Amendment is shown below:




**Amended Proposed Land Use - 2020 Small Area Comprehensive Plan Amendment (current initiative)**

Once the Planning and Zoning Commission agrees to this proposed amendment, the zoning map and related text can be amended, by creating a zoning district conducive to recognizing the established land uses, discourage expansions of these uses, and encourage compatible land uses in the future. To this end, the M-1 Limited Manufacturing District has been created to accommodate ALL of the legally-existing land uses, in order to remove their nonconforming status and move the area to a more realistic development and redevelopment scenario going forward.

D. Conclusion

The purpose of the Comprehensive Plan Amendment initiative would be to reflect current market forces and the highest and best use for the properties along East Quincy Street by assuring that the Proposed Land Use Map reflects existing land uses along this corridor.

Doing so would bring this area into line with the policies inherent in the Comprehensive Plan that deal with encouraging mixed use and helping disparate uses coexist, while preserving the history of Westmont's land uses going forward.

E. Legal

Notification: Legal Notice was published in the Suburban Life Newspaper on December 19, 2020 in preparation for the January 8. 2020 Planning and Zoning Commission agenda. The item was tabled to February 12, 2020 and a new legal notice was not required.

F. Other Actions:

Staff conducted a neighborhood meeting for businesses and residents along East Quincy Street in order to ascertain the best zoning configuration. The meeting provided residents and property owners in the area with an opportunity to ask questions about zoning tools

and provide a land use plan approach that would work for all involved. It also presented various scenarios for proposed rezoning approaches and allowed residents the opportunity to provide input. Following that neighborhood meeting, Village reported back to the Economic Development Committee and Planning and Zoning Commission, which subsequently recommended approval for the Comprehensive Plan Amendment.

| | |
|---|---|
| AGENDA NUMBER: | 1 |
| CASE NUMBER: | PZC 19-028 |
| TYPE: | COMPREHENSIVE PLAN AMENDMENT<br>ZONING TEXT AMENDMENT<br>ZONING MAP AMENDMENT |

# Board of Trustees Memorandum March 26, 2020

**For Consideration:**
The Planning and Zoning Commission recommends approval of the following:

1. Amend the Existing and Proposed Land Use Maps of the Adopted Comprehensive Plan (2013).
2. Creating a new M-1 Limited Manufacturing zoning district with certain limited industrial and retail uses as permitted or special uses, and outdoor storage as a special use; and,
3. Rezoning certain properties to M-1 Limited Manufacturing.

**Recommended Actions**:
The Planning and Zoning Commission recommends approval.

## I. Basis of Recommendation

### A. Background

The East Quincy Corridor is made up of a core mix of business, public, institutional and government uses, such as the Westmont Chamber of Commerce, Township Highways property, Westmont Park District and Westmont School District Offices, Bales Lumber and Supply, IGE, Griffith Landscaping, and Kaybee Building Corp. At one point, the area was targeted as a future mixed-use area, containing a portion of downtown (these properties include Bales Ace Hardware and Westmont Centre), and high density residential uses (the properties to the east of Bales Lumber). A Transit Oriented Development (TOD) Study was

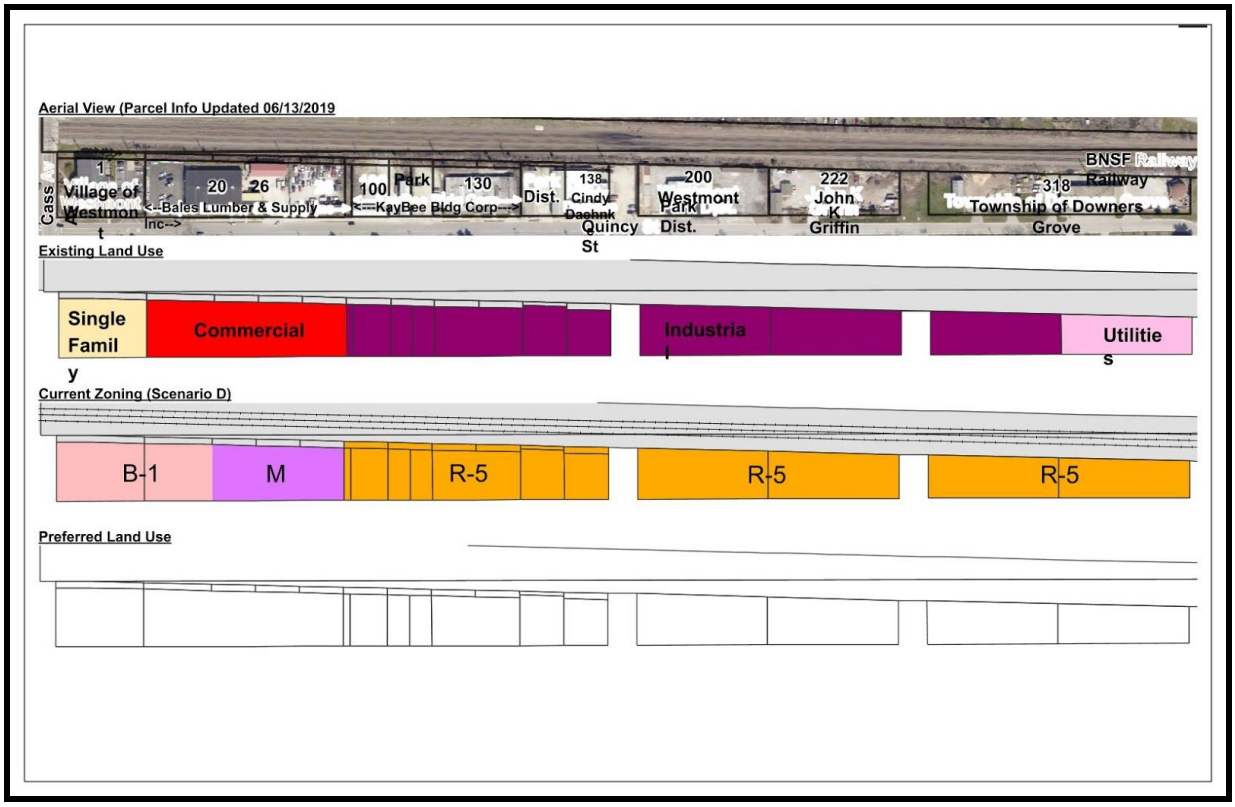
developed in 2016 following the adoption of the Downtown Subarea Plan, as part of the adopted 2013 Comprehensive Plan.

These documents indicate a desire to change, as the Subarea plan states, the "three-block area east of Cass Avenue currently hosting secondary retail, light industrial, or public works uses that can transform over time into Downtown supportive housing, mixed-use, and/or Downtown square."

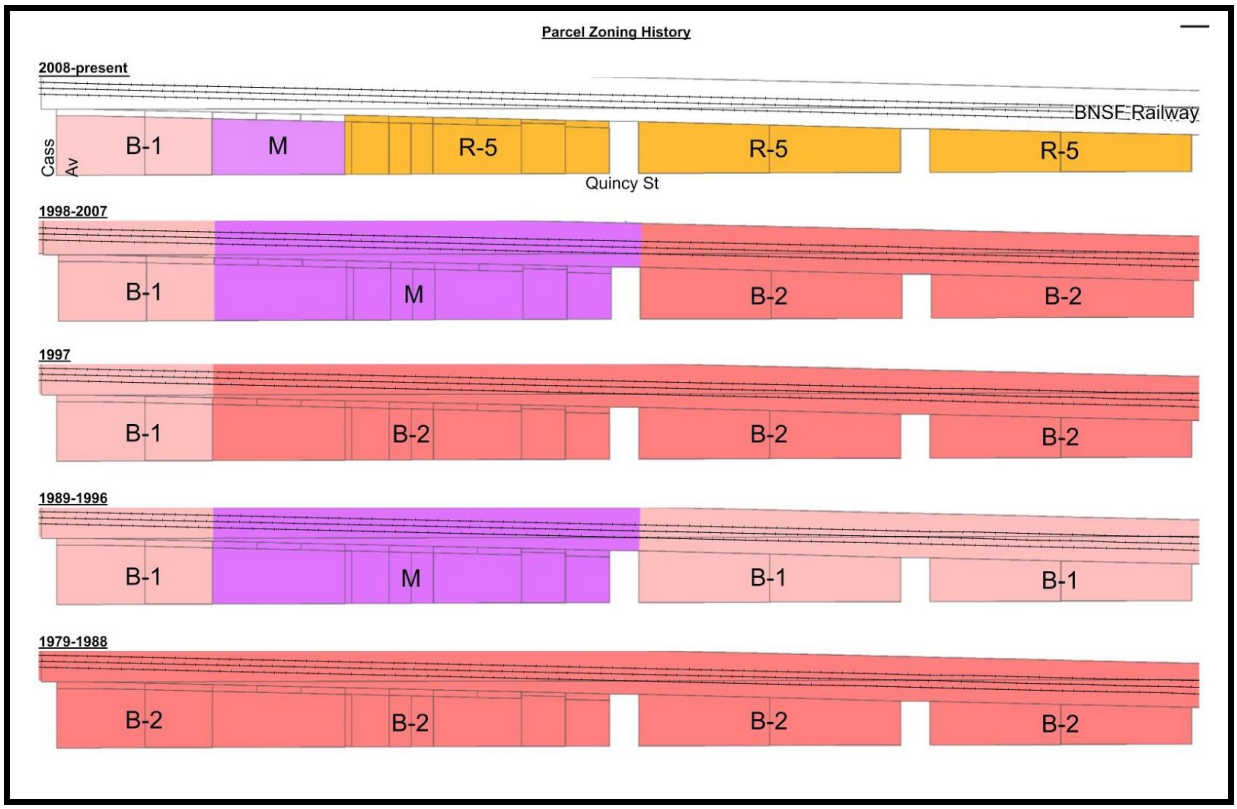
In this traditionally accepted scenario, the Westmont Public Works properties to the north of the BNSF railway line, as well as the Westmont Park District and Township Highway Properties on Quincy Avenue, would be relocated in order to welcome high density residential. For this reason, the area was rezoned to R-5 (General Residence), with some properties remaining Manufacturing and Limited Business (Ace Hardware and Westmont Centre).

The Comprehensive Plan also identified these properties as "primary redevelopment opportunities" in Downtown Westmont, stating that "these areas should aim to transform into multi-family housing or townhomes, mixed use, or urban open space that complements other investment in Downtown and strengthens the market for retail and restaurants" (2013, p. 98).

At the Planning and Zoning Commission meeting of February 12, 2020, the recommendation was made to approve the Comprehensive Plan amendment. The Village Board will consider the recommendation at its meeting of March 12, 2020. At the Planning and Zoning Commission meeting of March 11, 2020, the recommendation was made to approve the Zoning Text amendment to create a new M-1 Limited Manufacturing District and to approve Zoning Map amendment to rezone properties along Quincy to M-1 Limited Manufacturing.




**Aerial map with owner information, existing land uses and current zoning districts**




**Historical zoning districts**

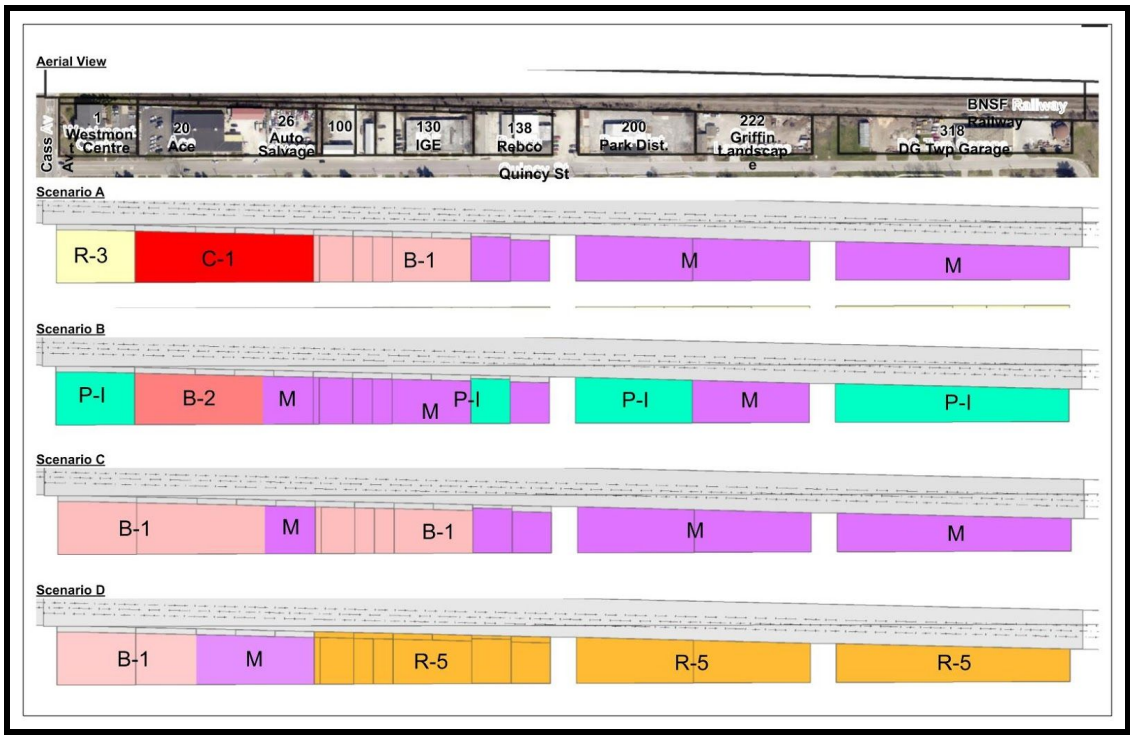
B. Critical Issues

Over time, it has become clear that a combination of policy and market factors is not supporting a move to high density residential at this precise location. Most recently, a brand new Public Works facility is under construction north of the BNSF rail lines, further establishing the existing public sector uses as more permanent in nature. Additionally, a review of the environmental issues in the area, and the market requirements that would support high density housing along the edge of the railroad lines, paint a picture conducive to fortifying the established uses.

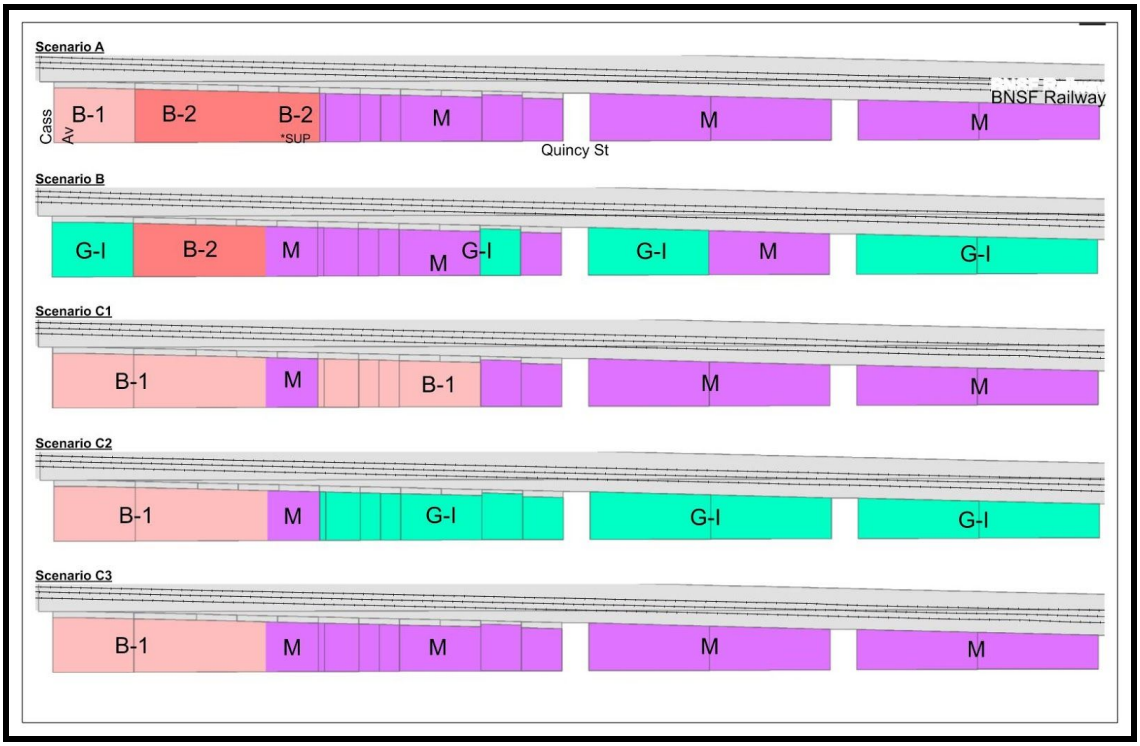
Current stakeholder discussions indicate that the history of the area as industrial in nature, with closely related uses, continue to find support through policy documents, such as the Comprehensive Plan, and implementation tools, such as through the zoning map.

The Community Development Department was charged with the task of developing a limited number of scenarios as the basis for a rezone initiative for this corridor. This rezone initiative is limited to the area along the north side of East Quincy Street, bounded by Cass Avenue to the West and Richmond Avenue to the East (Village Limits).

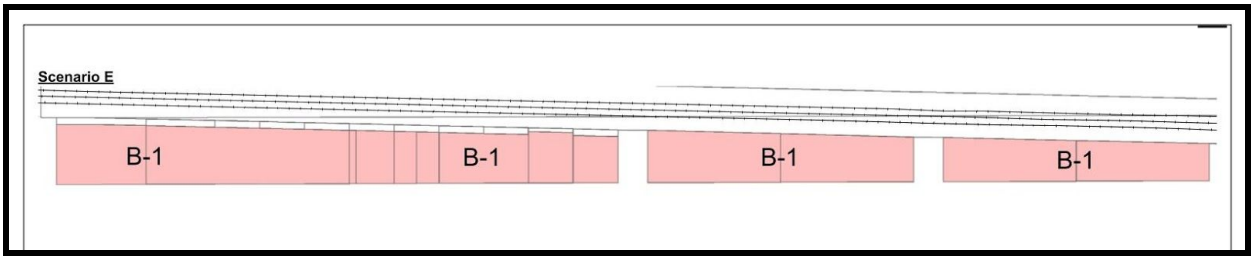
The following are map depictions of some of these scenarios:



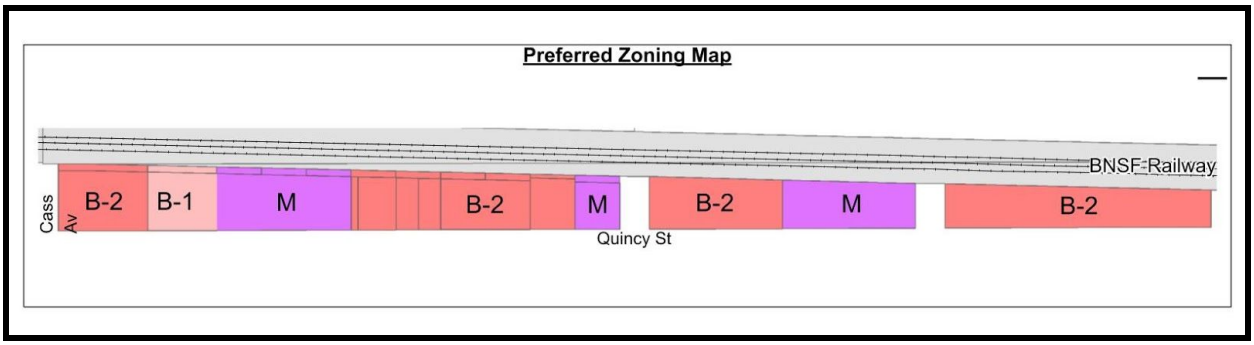

**Zoning Scenarios based on existing uses, proposed zoning districts and existing zoning**



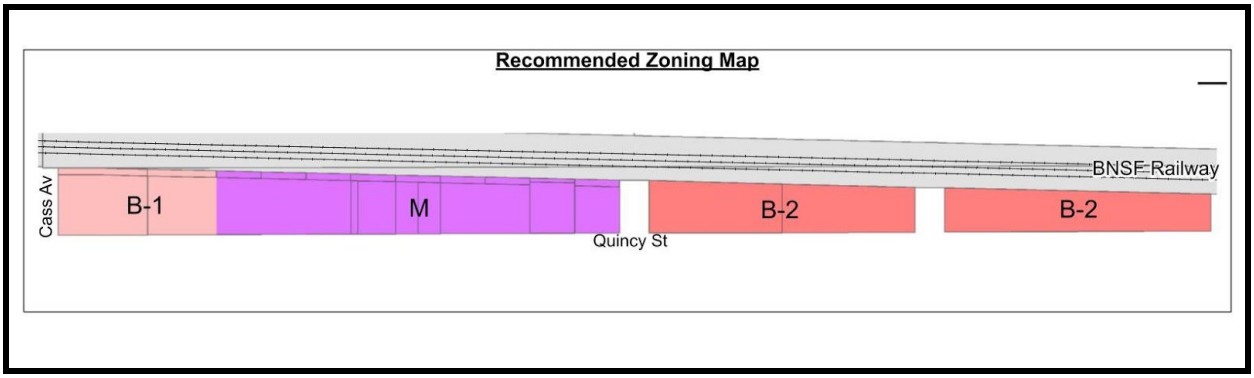

**Zoning scenarios based on existing land uses, historical zoning and proposed districts**




**Zoning scenario based on incorporation into downtown TIF district**

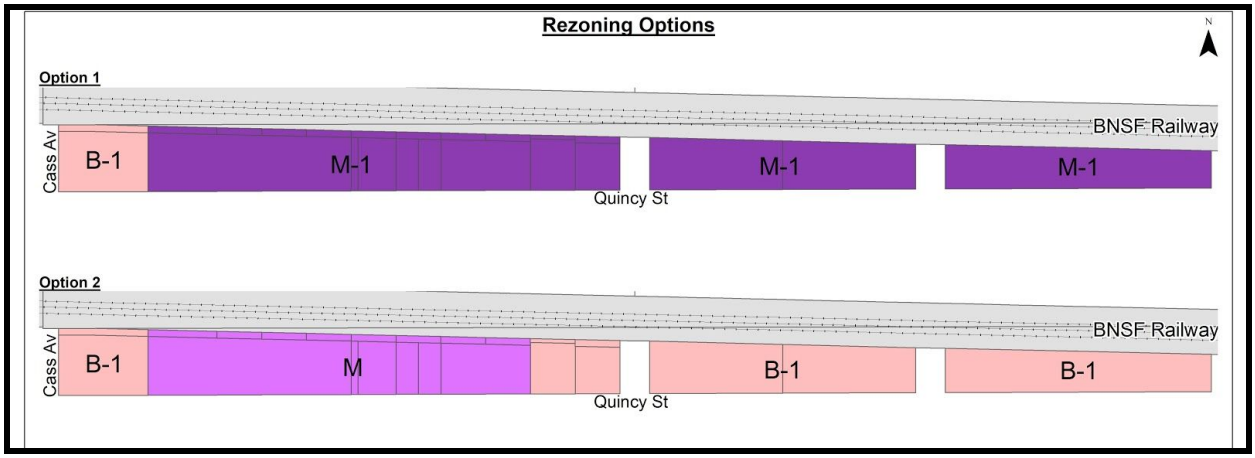



**Zoning scenario based on property owner feedback**




**Recommended zoning configuration that emerged from the November 20, 2019 Community Forum**

**Rezoning Option:**




**Options based on discussions with the Village Attorney on November 21, 2019. Option 1 was recommended by staff and approved by the Economic Development Committee on December 4, 2019**

While a full analysis of the factors that have yielded to this reality is beyond the scope of this report, the Village has determined that it must act quickly to preserve and conserve the current mix of uses along this portion of East Quincy. In order to do so, a two pronged approach has been adopted by consensus:

1. Creating a new light industrial zoning district, and
2. Applying this new zoning district to existing uses along the corridor.

"Exhibit B" proposes a new manufacturing zoning district, M-1 Limited Manufacturing, with the aim of preserving current uses while preventing expansions of these same uses, and encouraging uses compatible with these existing businesses. Exhibit B is attached to this board memo.

C. Analysis

The following are some of the recommendations / benefits of rezoning these properties to the proposed M-1 zoning district:

a. Spot Zone:
    i. Recommendation: The proposal removes the spot zone condition present at Bales Hardware and Lumber Supply and encourages consistency between and among existing and future uses along East Quincy.
b. Mixed-Use:
    i. Recommendation: Comprehensive Plan identified multi-family residential through the Proposed Land Use Map. The discrepancy between the proposed

land uses and existing uses needs to be corrected to reflect the desire in the area to maintain the historical identity of the manufacturing uses along the corridor.

ii. Recommendation: Zoning Text Amendment to include limited manufacturing or craft and artisanal establishments.

c. Limited Manufacturing:

i. Recommendation: Create a M-1 Limited Manufacturing District that provides for more compatible manufacturing-friendly uses, while discouraging expansion of existing uses and encouraging compatible uses to allow all present and future uses to co-exist. This proposal recognizes that the uses along the East Quincy corridor are not heavy industrial uses. Instead, they are low impact industrial uses, compatible with the surrounding residential districts. Through discussions with the Village Attorney, staff determined that a viable option would be to create a limited manufacturing zoning district that would bring together industrial type uses that are compatible and that can co-exist with residential districts, such as the East Quincy corridor's north-facing properties along the south. The draft of this text amendment is in this staff report as Exhibit A.

d. Truck Routes:

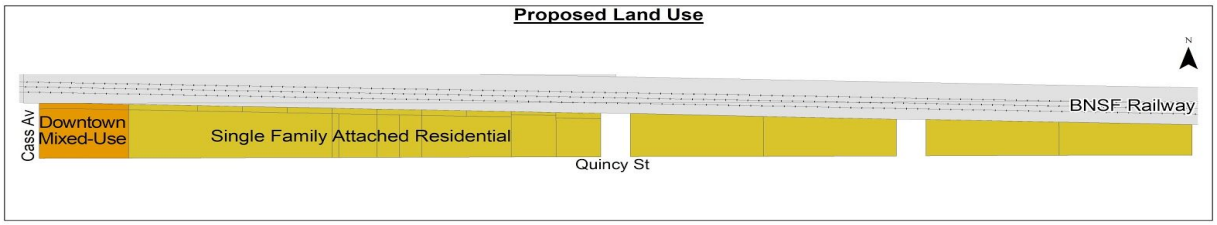
i. Recommendation: Quincy Street is a Collector Street that ends at Richmond Avenue. The roadway does not go through to Clarendon Hills and instead, traffic is forced to make a hard right turn on to Richmond Avenue. This means that traffic moving east from Cass Avenue is mostly local traffic. However, it has historically been used as a truck route, diverting traffic through the neighborhood rather than along Cass Avenue. In the future, any business land uses along Quincy Street should be low impact and it is recommended that future planning encourage a reduction in traffic pressures along this area.

D. Comprehensive Plan Amendments

Components of the Comprehensive Plan, such as the Subarea plan for the Central Business District, along with the Existing and Proposed Land Use Maps, will be amended as a preliminary step to the creation of a new zoning district to implement the planning orientations inherent in these documents.

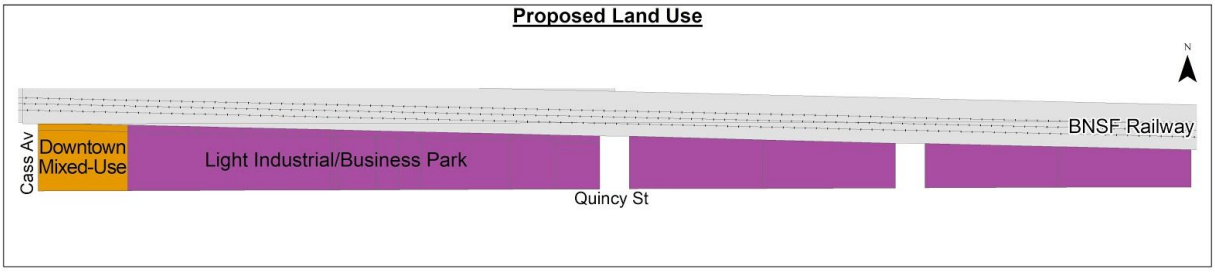
Below is a map showing existing land uses uses and current zoning:

In order to remove the R-5 zoning for these properties, we first need to amend the Comprehensive Plan's Proposed Land Use Map, below:




**Proposed Land Use - 2013 Comprehensive Plan**

The proposed Land Use Map Amendment is shown below:




**Amended Proposed Land Use - 2020 Small Area Comprehensive Plan Amendment (attached as Exhibit "C")**

Once the Planning and Zoning Commission agrees to this proposed amendment, the zoning map and related text can be amended, by creating a zoning district conducive to recognizing the established land uses, discourage expansions of these uses, and encourage compatible land uses in the future. To this end, the M-1 Limited Manufacturing District has been created to accommodate ALL of the legally-existing land uses, in order to remove their nonconforming status and move the area to a more realistic development and redevelopment scenario going forward.

E. Zoning Text Amendment:

Creating a new zone district requires a zoning text amendment to create a zoning district and to create a permitted and special use table for this new district.

The M-1 district is primarily intended to accommodate office, research and employment uses, including very low-impact industrial activities, which are manufacturing and industrial uses that process, fabricate, assemble, treat or package finished parts or products without the use of explosive or petroleum materials. Uses in this subcategory do not involve the assembly of large equipment and machinery and have very limited external impacts in terms of noise, vibration, odor, hours of operation and truck and commercial vehicle traffic. Uses include artisanal industrial activities, such as the on-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

Currently, our M district is defined generally as allowing manufacturing establishments, the principal use of which is manufacturing, fabricating, processing, assembling, repairing,

storing, cleaning, servicing or testing of materials, goods or products. This term would include all intensity types of manufacturing uses, including general, intensive and junk and salvage yards. The Zoning code uses performance measures to control any adverse impacts of these activities. Uses in the Manufacturing districts include uses in the M-1 district above, as well as general and intensive industrial uses, as described below.

General industrial uses are activities that involve processing, fabricating, assembling or treating materials for the production of large equipment and machines as well as industrial uses that because of their scale or method of operation regularly produce odors, dust, noise, vibration, truck/commercial vehicle traffic or other external impacts that are detectable beyond the property lines of the subject property.

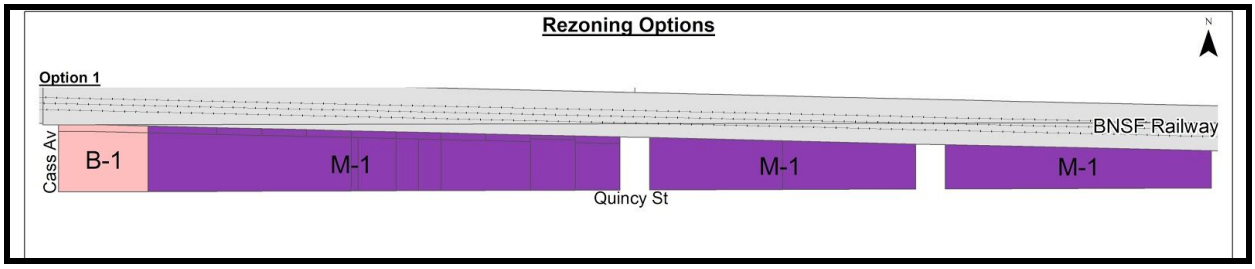
Intensive Industrial uses are manufacturing and industrial activities that regularly use hazardous chemicals or procedures or produce hazardous byproducts, including the following: manufacturing of acetylene, cement, lime, gypsum or plaster-of-Paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, poisons, explosives, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins and radioactive materials. This subcategory also includes petrochemical tank farms, gasification plants, smelting, asphalt and concrete plants and tanneries. Intensive industrial uses have high potential for external impacts on the surrounding area in terms of noise, vibration, odor, hours of operation and truck/commercial vehicle traffic.

Our Manufacturing districts also potentially include activities such as junk or salvage yards, which are areas or building where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled for reclamation, disposal or other like purposes, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles.

Our staff proposal for removing the option that would allow M zoning in this area, while also removing the existing R-5 residential zoning, and instead, creating a new M-1 Limited Manufacturing district, honors the history of the manufacturing businesses long East Quincy Street, while providing a future orientation intended to strengthen the interplay between the variety and diversity of mixed uses in the downtown core - including allowing for retail uses and other pedestrian friendly activities, while minimizing adverse impacts created by more intense manufacturing uses.

Under this M-1 Limited Manufacturing District, outdoor storage is allowed, with certain conditions. If the Planning and Zoning Commission agrees to the creation of a M-1 Limited Manufacturing Zoning District, as presented in Exhibit A, the Zoning Map may be amended

to rezone the subject properties from R-5 or M to the M-1 Zoning District:




**Preferred rezoning option (attached as Exhibit "D")**

F. Conclusion

The purpose of the rezone initiative would be to restore the zoning to match the existing uses along this portion of Quincy Street, in order to maximize the realization of the property values along this area, while maximizing the stability and viability of these properties from a land use and community character perspective.

Doing so would bring this area into line with the policies inherent in the Comprehensive Plan that deal with encouraging mixed use and helping disparate uses coexist, while preserving the history of Westmont's land uses going forward.

G. Legal

Notification: Legal Notice was published in the Suburban Life Newspaper on December 19, 2020 in preparation for the Planning and Zoning Commission agenda of January 8. 2020. The item was tabled monthly for follow-up discussions to each of the following Planning and Zoning Commission meetings, without interruption. Therefore, new legal notices are not required.

H. Other Actions:

Staff conducted a neighborhood meeting for businesses and residents along East Quincy Street in order to ascertain the best zoning configuration. The meeting provided residents and property owners in the area with an opportunity to ask questions about zoning tools and provide a land use plan approach that would work for all involved. It also presented various scenarios for proposed rezoning approaches and allowed residents the opportunity to provide input. Following that neighborhood meeting, Village reported back to the Economic Development Committee and Planning and Zoning Commission. Additionally, the Village Attorney worked with a private attorney representing a property owner to draft M-1 Limited Manufacturing regulations that would serve the needs of the current properties while accommodating the requirements of the surrounding properties, most of which are residential or commercial in nature. All items received unanimous approval at the Planning and Zoning Commission meeting March 11, 2020.

**Exhibit "A"**

**LEGAL DESCRIPTION**

**Exhibit "B"**

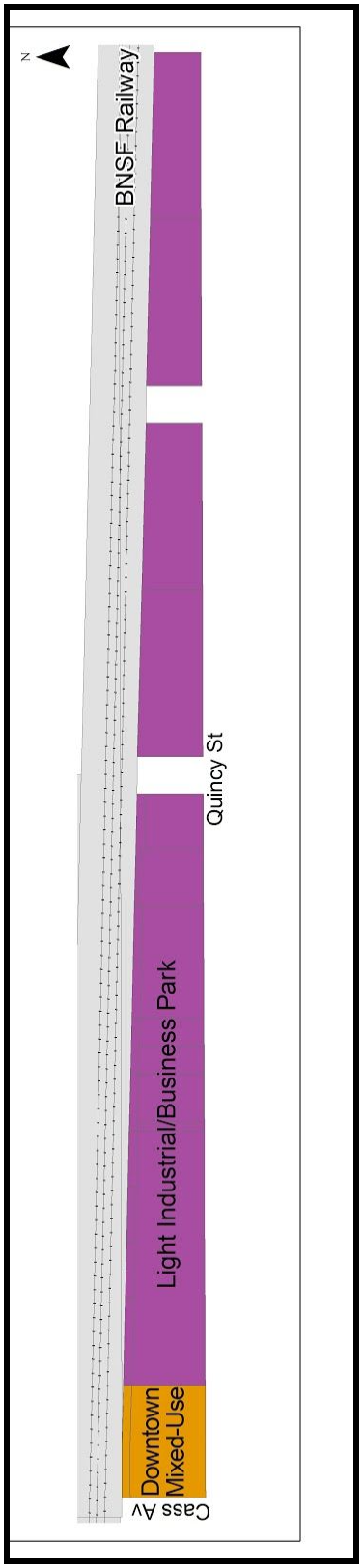

N
Cass Av
Downtown Mixed-Use
Light Industrial/Business Park
Quincy St
BNSF Railway

**Exhibit "C"**

**Zoning Text Amendment - M-1 Limited Manufacturing District**

## ARTICLE VIII. - MANUFACTURING AND OFFICE/RESEARCH DISTRICTS

### Sec. 8.01. - Preamble.

The regulations for the manufacturing and office/research districts are designed to provide for the establishment of a full range of manufacturing and office activities and to govern their operations in a manner that will not have a deleterious effect on residential and business areas. It is essential that there be adequate provision for the expansion and diversification of industry and office/research facilities, both those existing today and for the attraction of new facilities. Adequate well-located manufacturing and office sites and room for expansion of established facilities will encourage manufacturing and office growth, and expansion of Westmont's economic base. It will also open new opportunities for a variety of employment for its labor force. (See article XIII relative to certification required as to compliance with the performance standards of these districts.)

The M and M-1 manufacturing districts are established to provide an environment suitable for manufacturing activities that require a pleasant and nuisance-free environment and that will be compatible with any adjacent residential and business uses. The O/R office-research district is established to provide an area for the promulgation of office/research facilities where they can be compatible with other land uses in the village.

### Sec. 8.02. - Manufacturing and Limited Manufacturing district provisions.

(A) *Operations within enclosed buildings.* Except as authorized pursuant to a special use permit for outdoor storage in the M-1 limited manufacturing district, all activities involving the manufacturing, fabricating, processing, assembling, disassembling, repairing, cleaning, servicing, testing and storing of materials, products and goods shall be conducted within completely enclosed buildings.

(B) *Outdoor storage.* Outdoor storage is allowed only in the M-1 limited manufacturing district pursuant to a special use permit and approval of an accompanying site plan and landscape plan. The site plan shall show the location of all structures in the outdoor storage area, the location of all materials, vehicles and equipment to be stored, the location of all drive aisles and parking areas, and the location of all fences/walls and gates used to screen the outdoor storage area. All outdoor storage areas shall be enclosed and screened by a solid fence or wall 8 feet in height, including solid doors or gates. A building may also serve as part of the screen for outdoor storage. The outdoor storage of materials, equipment and vehicles unrelated to the primary business operating from the property is not allowed.

(C) *Performance standards.* Any use established in the manufacturing district and limited manufacturing district shall be so operated as to comply with the performance standards governing:

(1) Noise;

(2) Vibration;

(3) Smoke and particulate matter;

(4) Toxic matter;

(5) Odorous matter;

(6) Fire and explosive hazards;

(7) Glare and heat; and

(8) Radiation hazards,

as set forth hereinafter.

Established uses may be altered, enlarged, expanded or modified provided that the additions or changes comply with said performance standards and comply with all other village ordinances, codes and regulations.

(1) *Performance standards—Noise.* For the purpose of measuring the intensity and frequency of sound, the sound level meter, the octave band analyzer and the impact noise analyzer shall be employed.

The flat network and the slow meter response of the sound level meter shall be used. Sounds of very short duration, as from forge hammers, punch presses and metal shears, which cannot be measured accurately with the sound level meter shall be measured with the impact noise analyzer. Octave band analyzers calibrated in the preferred frequencies (American National Standards Institute Standard S 1.6—1967, Preferred Frequencies and Band Numbers for Acoustical Measurements) shall be used.

The following uses and activities shall be exempt from the noise level regulations:

Noises not directly under the control of the property user.

Nonroutine operations accessory to the primary activities and which are temporary in nature or conducted infrequently.

The noises of safety signals, warning devices and emergency pressure relief valves.

Transient noises of moving sources of noise such as automobiles, trucks, excavation equipment, tractors, airplanes and railroads.

The decibel values specified for measurement at nearest residence districts shall be reduced by three decibels between the hours of 7:00 p.m. and 7:00 a.m. In manufacturing districts, the generation of noise shall not exceed the decibel limits prescribed below:

*Maximum Permitted Sound Levels*

*Decibels (re .0002 Microbar)*

| Octave Band Preferred Frequencies (cycles per second) | Measured at Neighboring Lot | Measured at Nearest Residencial Lot Line |
|---|---|---|
| 31.5 | 83 | 76 |
| 63 | 78 | 71 |
| 125 | 72 | 65 |
| 250 | 64 | 57 |
| 500 | 57 | 50 |
| 1,000 | 51 | 45 |
| 2,000 | 46 | 39 |
| 4,000 | 41 | 34 |
| 8,000 | 38 | 32 |

Impact noises measured on an impact noise analyzer shall not exceed the following peak intensities:

| | Measured at Neighboring Lot | Measured at Nearest Residencial Lot Line |
|---|---|---|
| Overall peak | 86 | 80 |

(2) *Performance standards—Vibration.* In the manufacturing districts, no activity or operation shall cause or create earthborne vibrations in excess of the displacement values or vibration limits given below.

Measurements shall be made at or beyond the adjacent lot line or the nearest residence district boundary line as described below. Vibration displacements shall be measured with an instrument or complement of instruments capable of simultaneously measuring in three mutually perpendicular directions. The maximum vector shall be less than the vibration displacement permitted.

The maximum permitted displacements shall be determined by the following formula:

$D = K / f$

| | | | |
|---|---|---|---|
| where | D | = | Displacement in inches. |
| | K | = | A constant to be determined by reference to the following tables. |
| | f | = | The frequency of the vibration transmitted through the ground, cycles per second. |

The maximum earth displacement permitted at the points described below shall be determined by use of the formula in the preceding paragraph (2) and the appropriate K constant shown in table 1.

*Table 1. Values of K to be used*

*in Vibration Formula*

| Location | K |
|---|---|

| | | |
|---|---|---|
| In any neighboring lot: | | |
| | Continuous | 0.008 |
| | Impulsive | 0.015 |
| | Less than eight pulses per 24-hour period | 0.037 |
| In any residence district: | | |
| | Continuous | 0.003 |
| | Impulsive | 0.006 |
| | Less than eight pulses per 24-hour period | 0.015 |

(3) *Performance standards—Smoke and particulate matter.* The emission of smoke or particulate matter in sufficient quantities and of such characteristics and duration as to be injurious to public health and safety or which unreasonably interferes with personal comfort and welfare is hereby declared to be a public nuisance and shall not be permitted in the manufacturing districts.

For the purpose of grading the density of equivalent opacity of smoke, the Ringelmann Chart described in the U.S. Bureau of Mines Information Circular 8333 (May 1967) shall be employed. The emission of smoke or particulate matter of a density or equivalent opacity equal to or greater than No. 2 on the Ringelmann Chart is prohibited at all times except as otherwise provided hereinafter.

Dust and other types of air pollution borne by the wind from such sources as storage areas, yards, roads and the like within lot boundaries shall be kept to a minimum by appropriate landscaping, paving, oiling, fencing, wetting or other acceptable means.

Particulate matter loadings in pounds per acre described below shall be determined by selecting a continuous four-hour period which will result in the highest average emission rate.

The emission of smoke having a density or equivalent opacity in excess of Ringelmann No. 1 is prohibited. However, for not more than two minutes in any four-hour period, smoke up to and including Ringelmann No. 2 shall be permitted.

The rate of emission of particulate matter from all vents and stacks within the boundaries of any lot shall not exceed five-tenths of a pound per acre of lot area per hour.

Suspended particulates carried across lot lines shall not exceed 25 micrograms per cubic meter, averaged over a 24-hour period at ground level or habitable elevation.

(4) *Performance standards—Toxic matter.* The release of airborne toxic matter shall not exceed 1/30 of the threshold limit values currently recommended by the American Conference of Governmental Industrial Hygienists, when measured at any point beyond the lot line, either at ground level or habitable elevation, whichever is more restrictive. Concentrations shall be measured and calculated as the highest average that will occur over a continuous 24-hour period. If a toxic substance is not listed, the applicant shall be required to submit documented proof that the proposed levels will be safe and not detrimental to the public health or injurious to plant and animal life.

(5) *Performance standards—Odorous matter.* The emission of odorous matter shall be in accordance with the requirements of each district.

The release of materials capable of becoming odorous, either by bacterial decomposition or chemical reaction, shall meet the standards of the district in which the odor is created.

When odorous matter is released from any operation, activity or use in the manufacturing districts, the concentration of such odorous materials shall not exceed the odor threshold when measured beyond the lot line, either at ground level or habitable elevation.

(6) *Performance standards—Fire and explosive hazards.*

(a) *Detonable materials.* Activities involving the storage, utilization or manufacture of materials or products which decompose by detonation shall be in accordance with the regulations of each district.

Such materials shall include but are not limited to all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof such as dry nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles and ozonides; unstable oxidizing agents such as perchloric acid, perchlorates and hydrogen peroxide in concentrations greater than 35 percent; and nuclear fuels, fissionable materials and products, and reactor elements such as uranium 235 and plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is limited to an inventory of five pounds.

(b) *Flammable solids.* In all manufacturing districts the storage, utilization or manufacture of solid materials or products ranging from incombustible to moderate burning is permitted.

In the manufacturing districts, the storage, utilization or manufacture of solid materials or products ranging from free or active burning to intense burning is permitted, provided either of the following conditions is met:

Said materials or products shall be stored, utilized or manufactured within completely enclosed buildings having no less than two-hour fire-resistant exterior walls and protected with an automatic fire extinguishing system; or

Said material, if stored outdoors, will be not less than 100 feet to the nearest lot line and provided that a special use permit is obtained which specifically approves the outdoor storage of said materials or products.

(c) *Flammable liquids and gases.* The storage, utilization or manufacture of flammable liquids shall be permitted in accordance with the following table, exclusive of storage of finished products in original sealed containers, which shall be unrestricted. Aboveground flammable liquid and gas storage tanks shall not be less than 50 feet from all lot lines. Flammable liquids and gases in original sealed containers [of] 55 gallons liquid capacity or less may be stored or utilized without restriction within a completely enclosed building.

*Total Capacity of Flammable*

Materials Permitted

*(in gallons)*

| | Aboveground (within enclosed building) | Underground |
|---|---|---|
| Materials having a closed cup flashpoint over 187 degrees but less than 300 degrees Fahrenheit | 20,000 | 100,000 |
| From and including 105 degrees Fahrenheit to and including 187 degrees Fahrenheit | 10,000 | 100,000 |
| Materials having a closed cup flashpoint of less than 105 degrees Fahrenheit | 3,000 | 100,000 |

When flammable gases are stored, utilized or manufactured and measured in cubic feet, the quantity in cubic feet at standard temperature and pressure shall not exceed 30 times the quantities listed above.

(7) *Performance standards—Glare and heat.* In all manufacturing districts, any operation or activity producing glare or heat shall be conducted within a completely enclosed building in such manner as not to create a public nuisance or hazard beyond the boundaries of the lot.

(8) *Performance standards—Radiation hazards.*

Release outside property lines: In all manufacturing districts, the release of radioactive materials or the emission of ionizing radiation outside of property lines shall be in accordance with the rules and regulations of the State of Illinois.

Unsealed radioactive materials: In all manufacturing districts, unsealed radioactive materials shall not be manufactured, utilized or stored (except when such materials are stored in a fireproof container at or below ground level) in excess of the following multiples of the quantities set forth in the table of Quantities of Radioactive Materials (see Appendix A).

Appendix A

Quantities of Radioactive Materials

| | Unsealed sources (curies) |
|---|---|
| Actinium 227 | 0.1 |
| Americium 241 | 0.1 |
| Antimony 124 | 1 |
| Arsenic 73<br>74<br>76<br>77 | 10<br>10<br>10<br>10 |
| Astatine 211 | 0.1 |

| | |
|---|---|
| Barium-lanthanum 140 | 1 |
| Beryllium 7 | 100 |
| Bromine 82 | 10 |
| Cadmium-silver 109 | 10 |
| Calcium 45 | 1 |
| Carbin 14 | 1,000 |
| Cerium-praseodymium 144 | 1 |
| Cesium-barium 137 | 10 |
| Chlorine 36 | 10 |
| Chromium 51 | 100 |
| Cobalt 58<br>60 | 10<br>10 |
| Copper 64 | 10 |
| Curium 242 | 0.1 |
| Europium 154 | 1 |
| Fluorine 18 | 100 |
| Gallium 72 | 10 |
| Germanium 71 | 100 |
| Gold 196<br>198<br>199 | 10<br>10<br>10 |

| | |
|---|---|
| Holmium 166 | 10 |
| Hydrogen (tritium) 3 | 1,000 |
| Indium 114 | 1 |
| Iodine 131<br>132 | 1<br>10 |
| Iridium 190<br>192 | 10<br>10 |
| Iron 55<br>59 | 10<br>1 |
| Krypton 85 | 1,000 |
| Lanthanum 140 | 10 |
| Lead 203<br>210 + dtrs | 10<br>0.1 |
| Lutecium 177 | 10 |
| Manganese 52<br>54<br>56 | 10<br>10<br>10 |
| Molybdenum 99 | 10 |
| Nickel 59<br>63 | 10<br>10 |
| Niobium 95 | 10 |

| | |
|---|---|
| Palladium-silver 109 | 10 |
| Palladium-rhodium 103 | 10 |
| Phosphorus 32 | 10 |
| Platinum 191<br>193 | 10<br>10 |
| Plutonium 239 | 0.1 |
| Polonium 210 | 0.1 |
| Potassium 42 | 10 |
| Praseodymium 143 | 10 |
| Promethium 147 | 10 |
| Radium 226 | 0.1 |
| Rhenium 183<br>186 | 10<br>10 |
| Rhodium 105 | 10 |
| Rubidium 86 | 10 |
| Ruthenium 103 | 10 |
| Ruthenium-rhodium 106 | 1 |
| Samarium 151<br>153 | 1<br>10 |
| Scandium 46<br>47 | 10<br>10 |

| | |
|---|---|
| 48 | 10 |
| Silver 105<br>110<br>111 | 10<br>10<br>10 |
| Sodium 22<br>24 | 10<br>10 |
| Strontium 89 | 1 |
| Strontium-yttrium 90 | 0.1 |
| Sulfur 35 | 10 |
| Tantalum 182 | 10 |
| Technetium 96<br>99 | 1<br>1 |
| Tellurium 127<br>129 | 10<br>10 |
| Thallium 200<br>201<br>202<br>204 | 10<br>100<br>10<br>10 |
| Thorium natural | 100 |
| Thorium-protoactinium 234 | 1 |
| Thulium-ytterbium 170 | 1 |

| | |
|---|---|
| Tin 113 | 10 |
| Tungsten 181<br>185 | 10<br>10 |
| Uranium 233<br>natural | 0.1<br>1,000 |
| Vanadium 48 | 10 |
| Yttrium 91 | 1 |
| Zinc 65 | 10 |
| Zirconium-niobium 95 | 10 |

(D) *Site plan approval.*

(1) Prior to the issuance of a building permit for any structure located on a lot, parcel or tract of land in the manufacturing districts, and in conjunction with a request for any special use permit, a site development plan, to include a landscaping plan, shall be presented to the planning and zoning commission for a recommendation and shall be submitted to the village board for approval or denial.

(2) The purpose of site plan approval is to provide for development of sites which consider all the elements of good land planning, as applicable, so as to provide an adequate relationship (a) between structures both on the site and on adjacent properties and (b) between the land uses both on the site and on adjacent properties while at the same time providing for adequate space, light, air, use and bulk limitations, to promote the health, safety and welfare of the village and its residents.

(3) In granting or withholding approval of site plans, the board of trustees shall be guided in the reasonable exercise of their discretion by the following standards:

(a) All plans shall be so designed that the public health, welfare and safety will be protected.

(b) The proposed development of the site shall be such that it does not cause substantial injury to the value of other property in the neighborhood.

(c) All plans shall provide for protection of both aesthetics and function of the natural environment, which shall include, but not be limited to, conditions pertaining to floodplains, soil and geologic characteristics and preservation of vegetation.

(4) No site plan approval shall be withheld unless the board of trustees shall determine that one or more of the foregoing standards is not satisfied. The reason for such withholding of approval shall be recorded in the proceedings of the board of trustees.

(5) An owner and/or operator shall continually maintain, repair and replace as necessary all landscaping, fences, walls and other screening shown on an approved site and/or landscape plan.

(E) *Planned development approval in M-1 limited manufacturing district.* Any expansion, redevelopment or development of property in the M-1 limited manufacturing district shall be processed as a planned development due to lot size restrictions and in order to promote flexibility in design and corresponding public benefits.

(Ord. No. 80-46, 11-17-1980; Ord. No. 85-15, 2-4-1985; Ord. No. 88-35, § 3, 3-21-1988; Ord. No. 07-103, § 1, 6-4-2007)

**Sec. 8.06. - Limited manufacturing district.**

*Purpose*. The purpose of the M-1 limited manufacturing district is to accommodate manufacturing and similar uses existing as of the date of the creation of this district and to allow limited manufacturing and similar uses which have minimal impacts on surrounding properties. The M-1 limited manufacturing district shall be restricted to office, research, employment and limited manufacturing uses as defined herein and as listed in section 8.07

**Sec. 8.07. - Permitted and special uses in the limited manufacturing district.**

| | | | | M-1 district | | |
|---|---|---|---|---|---|---|
| Use | | | | Permitted Use | Special Use | Special Conditions Code No. (see 8.08) |
| (A) | Limited manufacturing establishments (see definition) | | | P | — | |
| (B) | Other uses: | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| | (1) | Artisanal manufacturing establishments | P | — | |
| | (2) | Bakeries | P | — | |
| | (3) | Broadcast or recording studio | P | — | |
| | (4) | Building material sales and storage, including lumber, electrical and plumbing supplies | P | — | |
| | (5) | Business and professional office | P | — | |
| | (6) | Community and rain gardens | P | — | |
| | | | | | |
| | (7) | Contractors' offices and shops | P | — | |
| | (8) | Craft alcoholic beverage producers | — | S | 2 |
| | (9) | Equipment, product and component manufacturing | — | S | 2 |
| | (9a) | Equipment, product and component manufacturing existing as of the date of creation of the M-1 limited manufacturing district | P | | |

| | | | | | |
|---|---|---|---|---|---|
| | (10) | Greenhouses and nurseries | P | — | |
| | (11) | Hardware stores | P | — | |
| | (12) | Landscape contractor's office | P | — | |
| | (13) | Packing and crating | P | — | |
| | (14) | Parks and recreation | P | — | |
| | (15) | Printing and publishing establishments | — | S | 2 |
| | (16) | Public utility and governmental service uses. | _ | S | 2 |
| | (16a) | Public, utility and governmental service uses existing as of the date of creation of the M-1 limited manufacturing district | P | | |
| | (17) | Accessory uses to the above uses, including but not limited to: | | | |
| | | (a) Off-street parking and off-street loading as regulated in article X | P | — | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | (b) | Outdoor storage | — | S | 1, 2 |
| | | (c) | Outdoor sales lot | | S | 1, 2 |
| | | (d) | Retail | P | — | |
| | | (e) | Signs as regulated in article XI | P | — | |

**Sec. 8.08. Special Conditions.**

Prior to the authorization of a special use, and in addition to meeting all other special use standards, applicants for certain special uses must meet those special conditions listed herein when required in section 8.07:

*Code No.*

1. Outdoor storage must comply with Section Sec. 38-82.
2. Site and landscape plan approval is required in conjunction with special use approval.

**Sec. 8.09. - Bulk and development standards in the limited manufacturing district.**

The following bulk and development standards shall apply in the limited manufacturing district:

(A) Maximum height of buildings and structures: 35 feet.

(B) Minimum lot area: 10,000 square feet.

(C) Minimum yards:

(1) Front yard and side yard adjoining a street: 5 feet.

(2) Interior side, except as provided in subsection (4) below: five feet each.

(3) Rear: 10 feet

(4) Interior side and rear yards adjoining a residence district: 10 feet; such yards adjoining a residence district shall provide a solid seven-foot-high fence along the lot line or a dense landscape screen as approved through the site and landscape plan approval in Section 8.02.

(D) Off-street parking and off-street loading: Required in all districts in accordance with regulations set forth in article X of this ordinance.

(E) Expansion, redevelopment or development of property shall be processed as a planned development as set forth in section 8.02(E) of this article.

**Article XIV - DEFINITIONS:**

*Artisan manufacturing establishments*: Uses that involve the on-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

*Building materials*: Dimension lumber, millwork, cabinets and other building materials, including milling, planing, jointing or manufacturing of millwork.

*Junk or Salvage Yard*: An area or building where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled, sorted, or handled for reclamation, disposal or other like purposes, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles.

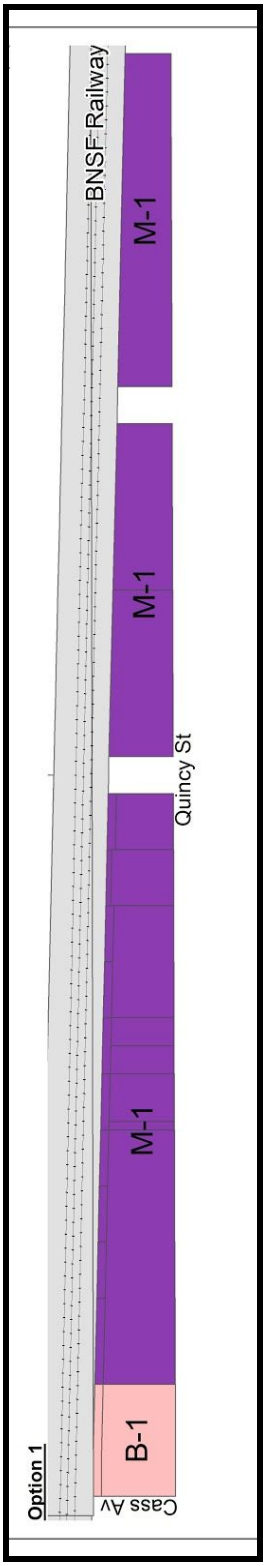
*Manufacturing establishment, general*: An establishment, the principal use of which is manufacturing, fabricating, processing, assembling, repairing, storing, cleaning, servicing or testing of materials, goods or products.

*Manufacturing establishment, limited*: Manufacturing uses that process, fabricate, assemble, treat, test, or package parts or products without the use of explosive or petroleum materials, unless approved by a special use permit. Uses in this district do not involve the assembly of large equipment and machinery and have limited external impacts in terms of noise, vibration, odor, hours of operation and truck and commercial vehicle traffic. Uses include artisanal manufacturing activities, such as the on-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts or very small-scale manufacturing uses that have no or limited negative external impacts on surrounding properties.

*Outdoor storage*: Any open-to-the-sky storage of goods, equipment or materials, including the storage of landscaping material and commercial vehicles and equipment.

**Exhibit "D"**

**Zoning Map Amendment**



**INTERGOVERNMENTAL AGREEMENT**
**BETWEEN**
**THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES**
**AND**

_____

2020-20-___

The Illinois Department of Healthcare and Family Services (the "Department" or "HFS") and _____, (Local Government) pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (the "IGA Act") and Section 2-32-030 of the Municipal Code of Chicago, hereby enter into this Intergovernmental Agreement (the "Agreement") in connection with supplemental ambulance rates. HFS and the Local Government are collectively referred to herein as "Parties" or individually as a "Party."

## ARTICLE I
## INTRODUCTION

1.01 Background. Article XII of the Illinois Public Aid Code, 305 ILCS 5/5 *et seq.* (the "Public Aid Code"), authorizes the Department to make use of, aid and co-operate with State and local governmental agencies, and the IGA Act provides for cooperation between units of government. Local Government operates a Fire Department (Provider) that is enrolled in the Medical Programs (as defined below) and provides Covered Ambulance Services (as defined below) to individuals eligible for benefits under the Medical Programs (as defined below); however, the costs of providing the referenced services is not covered by the fee schedule pursuant to which the Department and its agents pay for such services.

1.02 Purpose. In order to provide greater cost coverage to Provider for Covered Ambulance Services, the Parties enter into this Agreement.

1.03 Definitions

(a) Agent means Managed Care Organizations and Administrative Services Organizations.
(b) ALS means Advanced Life Support billed under CPT Code A0427.
(c) BLS means Basic Life Support billed under CPT Code A0429.
(d) Base Rate means the current fee-schedule rate for Provider on the Department's rate sheet for the Provider as of September 30, 2019.
(e) Covered Ambulance Services or Services means all ALS and BLS emergency ground ambulance services trips reimbursable under the Illinois Medicaid state plan, provided to beneficiaries of Medical Programs, and does not include mileage or oxygen.
(f) Effective Federal Match Rate means the weighted average of the Federal Medical Assistance Percentage (FMAP) for Illinois non-Affordable Care Act (ACA) enrollees and the supplemental FMAP for ACA expansion population based on the percentage of Covered Ambulance Services provided to the different populations.
(g) Interim Rate means the payments to Provider for Covered Ambulance Services in addition to the payments made pursuant to the state plan fee schedule and calculated pursuant to Article III.
(h) Medical Programs means programs administered by the Department under the Public Aid Code, the Children's Health Insurance Program Act (215 ILCS 106/1 *et seq.*) and the Covering All Kids Health Insurance Act (215 ILCS 170/1 *et seq.*).

(i) Participating Public Ambulance Provider means an ambulance provider owned by a municipal corporation or other unit of local government that has executed an Agreement with the Department with terms substantially identical to this Agreement.
(j) Quarterly Invoice means an itemized statement provided to the Local Government by the Department regarding supplemental payments for Services previously received by the Provider.
(k) Rate Year means calendar year.
(l) State Share means the portion of Medicaid claims expenditures not reimbursed using federal matching dollars.

## ARTICLE II
## INTERGOVERNMENTAL TRANSFER

2.01 Local GOvernment will transfer to the Department on a quarterly basis an amount equal to 50% of the total Interim Rates, as described in Article III, received by Provider from the Department and its agents for the prior quarter.
2.02 The Department will send a Quarterly Invoice to Local Government for the transfer of 50% of the supplemental payments described in Article III and transfer shall be made within 30 days after the receipt and verification of the Quarterly Invoice by the Local Government.

## ARTICLE III
## INTERIM RATES FOR SERVICES

3.01 Calculation. The Interim Rate will be determined as follows:
i. The Department will calculate, using data from each Provider's most recent timely filed cost report, Provider's total costs per ALS trip and BLS trip for Covered Ambulance Services based on a submitted Department approved cost report.
ii. The Department will calculate the difference between the ALS and BLS cost per trip calculated pursuant to (i) and the Department's published Base Rate for those trips to establish the Provider's Interim Rates for ALS and BLS.
3.02 Reimbursement. The Department shall pay or cause it agents to pay Interim Rates to Provider for Covered Ambulance Services pursuant to this Article III in addition to payments made at the Provider's Base Rate. The Interim and Base Rates will be added together during claims processing and paid as a single rate.
3.03 Cost Reports. The Department will annually notify Provider of the cost report template to be used and provide instructions and a due date for submission in order for Provider to be eligible for an Interim Rate the next Rate Year.
3.04 Reconciliation. Once the Department has a cost report covering a Rate Year in which Provider received an Interim Rate, it will calculate the actual cost per trip during the Rate Year and determine whether the Interim Rate underpaid or overpaid Provider for the cost of the Services. If Provider was underpaid, the Department will make a further payment to cover costs. If Provider was overpaid, the Department will notify Provider of the net amount due to the Department, taking into account amounts already transferred to the Department pursuant to Article II.

## ARTICLE IV
## TERM

4.01 Term. This Agreement shall commence October 1, 2019 provided Provider's Cost Report was received by the Department on or before October 1, 2019, or on January 1, 2020, if Provider's cost report was received after October 1, 2019 and on or before November 1, 2019, and shall continue until otherwise terminated by the Parties.

## ARTICLE V
## TERMINATION

5.01 Termination on Notice. This Agreement may be terminated by either Party for any or no reason upon thirty (30) days' prior written notice to the other Party.

5.02 Termination for Cause. In the event either Party breaches this Agreement and fails to cure such breach within ten (10) days' written notice thereof from the non-breaching Party, the non-breaching Party may terminate this Agreement upon written notice to the breaching Party.

5.03 Availability of Appropriation; Sufficiency of Funds. This Agreement is contingent upon and subject to the availability of sufficient funds. The Department may terminate or suspend this Agreement, in whole or in part, without advance notice and without penalty or further payment being required, if (i) sufficient funds for this Agreement have not been appropriated or otherwise made available to the Department by the State or the Federal funding source, (ii) the Governor or the Department reserves funds, or (iii) the Governor or the Department determines that funds will not or may not be available for payment. The Department shall provide notice, in writing, to Provider of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the date of the written notice unless otherwise indicated.

## ARTICLE VI
## MISCELLANEOUS

6.01 Renewal. This Agreement may be renewed for additional periods by mutual consent of the Parties, expressed in writing and signed by the Parties.

6.02 Amendments. This Agreement may be modified or amended at any time during its term by mutual consent of the Parties, expressed in writing and signed by the Parties.

6.03 Applicable Law and Severability. This Agreement shall be governed in all respects by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. In the event that this Agreement is determined to be invalid by a court of competent jurisdiction, it shall be terminated immediately.

6.04 Records Retention. The Parties shall maintain for a minimum of six (6) years from the later of the date of final payment under this Agreement, or the expiration of this Agreement, adequate books, records and supporting documents to comply with the Illinois State Records Act. If an audit, litigation or other action involving the records is begun before the end of the six-year period, the records shall be retained until all issues arising out of the action are resolved.

6.05 No Personal Liability. No member, official, director, employee or agent of either Party shall be individually or personally liable in connection with this Agreement.

6.06 Assignment; Binding Effect. This Agreement, or any portion thereof, shall not be assigned by any of the Parties without the prior written consent of the other Parties. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

6.07 Precedence. In the event there is a conflict between this Agreement and any of the exhibits hereto, this Agreement shall control. In the event there is a conflict between this Agreement and relevant statute(s) or Administrative Rule(s), the relevant statute(s) or rule(s) shall control.

6.08 Entire Agreement. This Agreement constitutes the entire agreement between the Parties; no promises, terms, or conditions not recited, incorporated or referenced herein, including prior agreements or oral discussions, shall be binding upon either Party.

6.09 Notices. All written notices, requests and communications may be made by electronic mail to the e-mail addresses set forth below.

To HFS: Mary.Doran@illinois.gov
Kiran.Mehta@illinois.gov

To Local GOvernment: _____

6.10 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

6.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered to be one and the same agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart. Duplicated signatures, signatures transmitted via facsimile, or signatures contained in a Portable Document Format (PDF) document shall be deemed original for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**LOCAL GOVERNMENT**

**SIGNATURE**_____

**NAME:**_____

**TITLE:**_____

**DATE:** _____

**ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES**

_____

**THERESA EAGLESON**
**DIRECTOR**

**DATE:** _____

March 17, 2020

Illinois Fire Chiefs Association
General Membership

Dear IFCA Members:

As we continue to move closer in accomplishing the supplemental funding through the Federal Ground Emergency Medical Transportation (GEMT) Program, I have been informed by the State of Illinois Department of Healthcare and Family Services that we now must complete and sign a new Intergovernmental Agreement (IGA) that will replace and rescind the previous IGA that governmental entities completed and signed in 2019.

The reason for this is because changes have been made between the State and the Center for Medicaid Services (CMS) to review a new State Plan Amendment (SPA) that is being prepared along with this IGA.

I am asking that this new IGA be completed, signed and returned to my designee no later than Monday March 30th, 2020. As we move ahead with this very important initiative, I must remind all you how critical and imperative this program's full approval is for the entire State of Illinois. This funding will exceed two hundred million dollars annually for governmental entities throughout the state, large and small, rural and urban, volunteer through fully paid and career departments who provide emergency medical transport services to all types of Medicaid recipients.

Now, I strongly urge you to mobilize your local government officials, and other contacts to communicate your strong views of support for this action and urge your local and state elected and appointed officials to petition the Federal and State entities to act on this as quickly as possible especially considering what we are currently experiencing with the COVID-19 pandemic. It is imperative that this funding be fully approved for all of us to continue to serve the Medicaid community and the needs associated with that population base related to ground emergency medical transportation services through a public entity.

Thank you all for your continued patience, support and assistance in this very important program and effort that will impact virtually every aspect of the Medicaid services we currently provide and the future of these services.

Thank you,

Mark J. Puknaitis
Fire Chief
Naperville Fire Department
1380 Aurora Ave. Naperville, IL 60540
Immediate Past President Illinois Fire Chiefs' Association