

CLERK'S CONTRACT and AGREEMENT COVER PAGE

Legistar File ID#: 2020-0749

Innoprise Contract #: C21-0026

Year: 2021

Amount:

Department: Public Works- NRF

Contract Type: Maintenance

Contractors Name: Automatic Building Controls (ABC)

Contract Description: Facility Management System Services

 ORLAND PARK
(Contract for Maintenance)

This Contract is made this 19th day of February 2021 by and between the Village of Orland Park (hereinafter referred to as the "VILLAGE") and Automatic Building Controls, LLC. (hereinafter referred to as the "CONTRACTOR").

WITNESSETH

In consideration of the promises and covenants made herein by the VILLAGE and the CONTRACTOR (hereinafter referred to collectively as the "PARTIES"), the PARTIES agree as follows:

SECTION 1: THE CONTRACT DOCUMENTS: This Contract shall include the following documents (hereinafter referred to as the "CONTRACT DOCUMENTS") however this Contract takes precedence and controls over any contrary provision in any of the CONTRACT DOCUMENTS. The Contract, including the CONTRACT DOCUMENTS, expresses the entire agreement between the PARTIES and where it modifies, adds to or deletes provisions in other CONTRACT DOCUMENTS, the Contract's provisions shall prevail. Provisions in the CONTRACT DOCUMENTS unmodified by this Contract shall be in full force and effect in their unaltered condition.

- The Contract
- The Terms and General Conditions pertaining to the Contract
- The VILLAGE'S Project Manual for the Work as described in Section 2 hereunder
- The Proposal as it is responsive to the VILLAGE's bid requirements
- Certificate of Compliance
- Certificates of Insurance
- Performance & Payment Bonds

SECTION 2: SCOPE OF THE WORK AND PAYMENT: The CONTRACTOR agrees to provide labor, equipment and materials necessary to perform the following:

Facility Management System Services, Labor Rates, and the Terms and Conditions of sale for the customized proprietary software control system designed by Automatic Building Controls, LLC for Alerton/Distech Technologies per the Facility Management Systems Service Plan dated January 18, 2021.

(hereinafter referred to as the "WORK") as described in the VILLAGE'S Project Manual and the VILLAGE agrees to pay the CONTRACTOR pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 et seq.) the following amounts for the WORK:

2021-2022 (March 1 – February 28)	\$ 24,829.00
2022-2023 (March 1 – February 28)	\$ 24,829.00
2023-2024 (March 1 – February 28)	\$ 25,573.00

(hereinafter referred to as the "CONTRACT SUM"). The CONTRACT SUM shall not be increased without the express written consent of the VILLAGE.

SECTION 3: ASSIGNMENT: CONTRACTOR shall not assign the duties and obligations involved in the performance of the WORK except to the list of Subcontractors approved by the Village, which approval shall not be unreasonably withheld.

SECTION 4: TERM OF THE CONTRACT: The CONTRACTOR shall commence the WORK of this Contract upon receipt of a Notice to Proceed and shall continue expeditiously from that date until February 28, 2024 with an option to renew for an additional two year term at the VILLAGE'S discretion. Final payment shall be made by the VILLAGE upon inspection of the WORK, completion of any punch list items and after receipt of final release and waiver of liens in accordance with the requirements of the CONTRACT DOCUMENTS. This Contract may be terminated by the VILLAGE for convenience or by either of the PARTIES for default in the performance of the duties of Contract for Maintenance

the PARTIES as described in the CONTRACT DOCUMENTS upon thirty (30) day's written notice provided as required herein.

SECTION 5: INDEMNIFICATION AND INSURANCE: The CONTRACTOR shall indemnify, defend and hold harmless the VILLAGE, its trustees, officers, officials, directors, agents, employees and representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence of the CONTRACTOR, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of said CONTRACTOR, its officers, officials, agents and/or employees arising out of, or in performance of any of the provisions of the CONTRACT DOCUMENTS, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE, its trustees, officers, officials, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The CONTRACTOR shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities.

The Contractor shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village and any other indemnified party. The Village or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the Contractor shall promptly reimburse the Village or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the Village or other indemnified party in connection therewith.

The indemnification obligation under this paragraph shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the benefit of Subcontractor or any indemnities under any Worker's Compensation Act, Occupational Disease Act, Disability Benefits Act, or any other employee benefits act. The Subcontractor further agrees to waive any and all liability limitations based upon the Worker's Compensation Act court interpretations or otherwise.

Execution of this Contract by the VILLAGE is contingent upon receipt of Insurance Certificates provided by the CONTRACTOR in compliance with the CONTRACT DOCUMENTS.

SECTION 6: COMPLIANCE WITH LAWS: CONTRACTOR agrees to comply with all federal, state and local laws, ordinances, statutes, rules and regulations including but not limited to all applicable provisions of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) and the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.)

SECTION 7: FREEDOM OF INFORMATION ACT COMPLIANCE: The Illinois Freedom of Information Act (FOIA) has been amended and effective January 1, 2010. This amendment adds a new provision to Section 7 of the Act which applies to public records in the possession of a party with whom the Village of Orland Park has contracted. The Village of Orland Park will have only a very short period of time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information.

The undersigned acknowledges the requirements of FOIA and agrees to comply with all requests made by the Village of Orland Park for public records (as that term is defined by Section 2(c) of FOIA) in the undersigned's possession and to provide the requested public records to the Village of Orland Park within two (2) business days of the request being made by the Village of Orland Park. The undersigned agrees to indemnify and hold harmless the Village of Orland Park from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Village of Orland Park under this agreement.

SECTION 8: NOTICE: Where notice is required by the CONTRACT DOCUMENTS, it shall be considered received if it is 1) delivered in person, 2) sent by registered United States mail, return receipt requested, 3) delivered by messenger or mail service with a signed receipt, 4) sent by facsimile with an acknowledgment of receipt, or 4) by e-mail with an acknowledgment of receipt only if the PARTIES agree separately to use e-mail for providing notice. Notice shall be sent to the following:

To the VILLAGE:
Finance Department
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462
Telephone: 708-403-6195
Facsimile: 708-403-9212
e-mail: nmerced@orlandpark.org

To the CONTRACTOR:
Rolly Persenico
Automatic Building Controls, LLC
3315 Algonquin Rd. Ste 550
Rolling Meadows, IL 60008
Telephone: 224-619-6536
Facsimile:
e-mail: persenicor@ab-controls.com

or to such other persons or to such other addresses as may be provided by one party to the other party under the requirements of this Section.

SECTION 9: LAW AND VENUE: The law of the State of Illinois shall apply to this Agreement and venue for legal disputes shall be Cook County, Illinois.

SECTION 10: MODIFICATION: This Contract may be modified only by a written amendment signed by both PARTIES.

SECTION 11: COUNTERPARTS: This Contract may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

This Contract shall become effective on the date first shown herein and upon execution by duly authorized agents of the PARTIES.

FOR: THE VILLAGE

By: 

Print name: George Koczwar

Title: Village Manager

Date: 3-2-21

FOR: THE CONTRACTOR

By: Rolly Persenico

Print name: Rolly Persenico

Title: Account Manager

Date: 2/25/21



Terms and General Conditions for the Contract between THE VILLAGE OF ORLAND PARK (the "VILLAGE") and Automatic Building Controls, LLC. (the "CONTRACTOR") for Facility Management System Services (the "WORK") dated February 19, 2021 (the "CONTRACT").

ARTICLE 1: DUTIES OF THE PARTIES

1.1 VILLAGE'S RIGHTS AND DUTIES

- 1.1.1 Upon request of the CONTRACTOR the VILLAGE shall furnish, with reasonable promptness, information necessary for the performance of the WORK of the CONTRACT including, where needed, land surveys showing boundaries, topography, the location of utilities and a legal description of the site where the WORK is to be performed.
- 1.1.2 The VILLAGE shall furnish access to its buildings and the site of the WORK as is necessary for the performance of the WORK and shall provide, at its own expense, as needed, temporary or permanent easements, zoning and other requirements including removal of encumbrances on the land needed to permit performance of the WORK.
- 1.1.3 The VILLAGE shall have the right to stop the WORK by a written order should the CONTRACTOR fail to correct Work not in accordance with the Contract Documents which will remain in effect until the WORK is corrected without giving rise to any duty on the part of the VILLAGE to stop the WORK for the benefit of the CONTRACTOR or any other entity.
- 1.1.4 The VILLAGE may, if the CONTRACTOR does not correct Work to make it conform to the Contract Documents, or cure a default, with reasonable promptness after receiving a written notice from the VILLAGE, correct the default itself and deduct the reasonable cost of the correction or cure from the amounts owed to the CONTRACTOR.
- 1.1.5 The Village, at any time and for any reason, may suspend work on any or all the Project by issuing a written work suspension notice to the Contractor. The Contractor must stop the performance of all the Work within the scope of the suspension notice until the Village directs the Contractor in writing to resume performance of the work. The Contract sum and time may, upon agreement of the parties, be adjusted for increase in cost and time caused by the suspension, delay or interruption.

1.2 CONTRACTOR'S RIGHTS AND DUTIES

- 1.2.1 The CONTRACTOR shall perform the WORK in accordance with the Contract Documents.
- 1.2.2 The CONTRACTOR shall examine existing conditions and take field measurements to facilitate the performance of the WORK and shall report to the VILLAGE or, where applicable, to the Architect, any errors, inconsistencies or omissions discovered. Contractor is not required to determine whether the Contract Documents conform to applicable local, state or federal statutes, ordinances, codes, rules or regulations, but where such nonconformity is found, Contractor shall report such to the VILLAGE, or where applicable, to the Architect.
- 1.2.3 Contractor shall pay for all material and labor necessary for the performance of the WORK and, unless agreed otherwise with the VILLAGE in a separate written document, for all utilities required such as light, heat and water.
- 1.2.4 Contractor warrants that the WORK shall contain material and equipment of good quality that is new and that the WORK and workmanship shall be free from defects for one (1) year after final payment or the length of time guaranteed under the warranty provided by the CONTRACTOR, whichever is greater. Where there are deficiencies, Contractor agrees to correct them with reasonable promptness after receiving notice of said deficiencies from the VILLAGE. All manufacturers' guarantees and

warranties shall be delivered to the VILLAGE prior to the issuance of final payment.

- 1.2.5 Contractor shall work expeditiously to complete the WORK by the agreed upon date and, where necessary to accomplish that goal, shall work overtime without additional compensation.
- 1.2.6 Contractor shall seek, obtain and pay for all required building permits, licenses, and governmental inspections of the WORK.
- 1.2.7 CONTRACTOR shall comply with all local, state and federal statutes, ordinances, codes, rules, and regulations governing the performance of the CONTRACTOR for the completion of the WORK, including but not limited to all of the applicable provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and the Illinois Human Rights Act (775 ILCS 5/1-01 et seq.) The CONTRACTOR shall obtain and preserve per the terms of the Document Retention Laws of the State of Illinois, certified payroll records for all work performed to complete the WORK, including that work performed by all those contractors subordinate to the CONTRACTOR or Subcontractor.
- 1.2.7.1 This CONTRACT calls for the construction/maintenance of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires CONTRACTORS and Subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. All CONTRACTORS and Subcontractors rendering services under this CONTRACT must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. Each CONTRACTOR and Subcontractor participating on this project shall make and keep those records required under Section 5 of the Prevailing Wage Act (820 ILCS 130/5). In conformance with the Act, each CONTRACTOR and/or Subcontractor participating on this Project shall maintain records of all laborers, mechanics and other workers employed by them on this Project, including the following information on each worker: (i) the worker's name, (ii) the worker's address, (iii) the worker's telephone number when available, (iv) the last 4 digits of the worker's social security number, (v) the worker's gender, (vi) the worker's race, (vii) the worker's ethnicity, (viii) veteran status, (ix) the worker's classification or classifications, (x) the worker's skill level, such as apprentice or journeyman, (xi) the worker's gross and net wages paid in each pay period, (xii) the worker's number of hours worked each day, (xiii) the worker's starting and ending times of work each day, (xiv) the worker's hourly wage rate, (xv) the worker's hourly overtime wage rate, (xvi) the worker's hourly fringe benefit rates, (xvii) the name and address of each fringe benefit fund, (xviii) the plan sponsor of each fringe benefit, if applicable, and (xix) the plan administrator of each fringe benefit, if applicable; These records shall be kept by the participating CONTRACTOR and Subcontractor for a period of not less than five (5) years. Each participating CONTRACTOR and Subcontractor shall submit a monthly certified payroll to the VILLAGE consisting of the above-referenced information as well as a statement signed by the participating CONTRACTOR or Subcontractor that certifies: (a) the records are true and accurate; (b) the hourly rates paid to each worker is not less than the general prevailing rate of hourly wages required under the Prevailing Wage Act; and (c) the CONTRACTOR or Subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor.
- 1.2.7.2 Neither the CONTRACTOR nor its Subcontractors shall tolerate or engage in any prohibited form of discrimination in employment as defined in the Illinois Human Rights Act. The CONTRACTOR shall maintain, and require that its Subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. Contractors and all Subcontractors shall comply with all requirements of the Act including maintaining a sexual harassment policy and of the Rules of the Illinois Department of Human Rights with regard

to posting information on employees' rights under the Act. Contractors and all Subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for work to be performed under the CONTRACT.

- 1.2.8 Contractor will not be relieved of any obligation to the VILLAGE due to failure to examine or receive documents, visit or become familiar with conditions or from facts of which Contractor should have been aware and Village, as existing law may allow, shall reject all claims related thereto.

ARTICLE 2: CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of the following items:

The Contract
The Terms and General Conditions pertaining to the Contract
The VILLAGE'S Project Manual for the Work
The Proposal as it is responsive to the VILLAGE's bid requirements
Certificate of Compliance
Certificates of Insurance
Performance & Payment Bonds

ARTICLE 3: PAYMENTS AND COMPLETION

- 3.1 The VILLAGE requires for each Application for Payment, a properly completed Contractor's Affidavit setting out, under oath, the name, address and amount due or to become due, of each subcontractor, vendor, supplier or other appropriate party included in that payment. For every party listed the CONTRACTOR shall also provide a full or partial waiver of lien, as appropriate, before a payment will be made to the CONTRACTOR. The CONTRACTOR's partial or final waiver of lien must be included. Payment certificates shall not be issued by Architect or payment shall not be made by the VILLAGE without such mechanics' lien waivers and contractors' sworn statements unless they are conditioned upon receipt of such waivers and statements.
- 3.2 No certificate shall be issued in favor of the CONTRACTOR and no payment will be made by the VILLAGE for material not actually installed and built into the WORK without written authorization for the VILLAGE.
- 3.4 Upon satisfaction of the terms and conditions of the CONTRACT, the CONTRACTOR agrees to provide the VILLAGE with a final release and waiver of all liens covering all of the WORK performed under the CONTRACT relative to the project prior to issuance of final payment. Said final waiver of lien shall identify and state that all Subcontractors have been paid in full and there are no contract balances outstanding and owed to any Subcontractor.
- 3.5 All payments shall be made to Contractor by Village pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*)

ARTICLE 4: TAXES

- 4.1 The VILLAGE is a public body and is exempt from excise, sales and use taxes and will furnish Contractor with exemption numbers as required. Contractor shall not include any such taxes in its cost figures.

ARTICLE 5: INSPECTION OF MATERIALS

- 5.1 The VILLAGE shall have a right to inspect any materials or equipment to be used in carrying out this contract. The CONTRACTOR shall be responsible for the contracted quality and standards of all materials, equipment, components or completed work finished under this contract up to the time of final acceptance by the VILLAGE. Materials, equipment, components or completed work not complying therewith may be rejected by the VILLAGE and shall be removed and replaced by the CONTRACTOR at no cost to the VILLAGE.

ARTICLE 6: ASSIGNMENT

- 6.1 The CONTRACTOR's duties and obligations under the CONTRACT shall not be assigned without the express written consent of the VILLAGE.
- 6.2 Work not performed by the CONTRACTOR with its own forces shall be performed by Subcontractors or Sub-subcontractors. The CONTRACTOR shall be responsible for management of the Subcontractors in the performance of their Work.
- 6.3 The CONTRACTOR shall not contract with anyone to whom the VILLAGE has a reasonable objection.
- 6.4 The CONTRACTOR shall prepare all Subcontracts and shall have full discretion to negotiate their terms, subject to the VILLAGE's reasonable requirements or objections as to form and content.
- 6.5 By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each Subcontractor, to the extent of the WORK to be performed by the Subcontractor, to be bound to the CONTRACTOR by terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the CONTRACTOR, by these Documents, assumes toward the VILLAGE. Each subcontract agreement shall preserve and protect the rights of the VILLAGE under the Contract Documents with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR, by the Contract Documents, has against the VILLAGE. Where appropriate, the CONTRACTOR shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CONTRACTOR shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 7: GUARANTEES AND WARRANTIES

- 7.1 All guarantees and warranties required shall be furnished by the CONTRACTOR and shall be delivered to the VILLAGE before final voucher on the CONTRACT is issued.
- 7.2 Contractor shall supply the VILLAGE with "as-built" plans prior to the VILLAGE making the final payment.

ARTICLE 8: DEFAULT

- 8.1 If the CONTRACTOR fails to begin the WORK under this contract within the time specified, or fails to perform the WORK with sufficient workmen, equipment or materials to insure the completion of said Work within the specified time, or shall perform the WORK in an unsatisfactory manner, or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective or unsuitable by reason of defect in material or workmanship or by reason of noncompliance with the specifications, or shall discontinue the prosecution of the WORK, or if the CONTRACTOR shall become insolvent or be declared bankrupt, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall fail to carry on the WORK in an acceptable manner, the VILLAGE shall give notice to the CONTRACTOR and his surety in writing specifying such failure, delay, neglect, refusal or default, and if the CONTRACTOR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then the VILLAGE shall have full power and authority to declare the forfeiture of this contract, and to forfeit the rights of the CONTRACTOR in this contract.
- 8.2 Upon declaration of Contractor's default, the VILLAGE may, at his option, call upon the surety to complete the WORK in accordance with the terms of this contract or may take over the WORK, including any materials and equipment on the work site as may be suitable and acceptable to the VILLAGE and may complete the WORK by or on its own force account, or may enter into a new contract for the completion of the WORK, or may use such other methods as shall be required for the completion of the WORK in an acceptable manner.
- 8.3 All costs and charges incurred by the VILLAGE, together with the cost of completing the WORK shall be deducted from any moneys due or which may become due on this contract. In case the expense so incurred by the VILLAGE shall be less than the sum which would have been payable under this contract if it had been completed by the

CONTRACTOR and had not been forfeited by the VILLAGE, then the CONTRACTOR shall be entitled to receive the difference, and in case such expense shall exceed the sum which would have been payable under this contract, the CONTRACTOR and the surety shall be liable and shall pay to the VILLAGE the amount of such excess.

ARTICLE 9: DISPUTES AND VENUE

9.1 If an Architect or Engineer has contracted with the VILLAGE to administer the CONTRACT between Village and Contractor, disputes shall be handled with the involvement of the Architect or Engineer according to the terms of the CONTRACT between the VILLAGE and the Architect or Engineer and any reference made herein to "Architect" shall be read as "Engineer" where applicable. In any other case, disputes concerning a question of fact under the CONTRACT shall be expressed in writing by the parties and, if within seven (7) days after receipt of such notice the parties have disposed of the dispute by agreement, the dispute, as it was expressed in writing by the parties, shall be subject to mediation under terms agreed to by the parties. Pending final decision of a dispute hereunder, the parties shall proceed diligently with the performance of the CONTRACT.

9.2 Any legal action taken by either party shall be decided based upon the laws of the State of Illinois and venue for such disputes shall be Cook County, Illinois.

ARTICLE 10: CONTRACT TIME

10.1 Time is of the essence of the CONTRACT. Village shall not grant, and Contractor shall not seek damages for delays; however, Village shall grant an increase in the Contract Time for delay not caused by Contractor, its Subcontractors or others for whose actions Contractor is liable.

ARTICLE 11: FORCE MAJEURE

11.1 Whenever a period of time is provided for in this Agreement for either the Contractor or Village to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, lockout, fire, flood, storm, earthquake, tornado, pandemic, act of public enemies, action of federal or state government or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond Contractor's control" if committed, omitted, or caused by Contractor, Contractor's employees, officers or agents or a subsidiary, affiliate or parent of Contractor or by any corporation or other business entity that holds a controlling interest in Contractor, whether held directly or indirectly (for example, but not by way of limitation, a strike by or lockout of Contractor's employees would not be an act "beyond Contractor's control"). Contractor shall notify the Village as soon as possible, but no later than two (2) business days, of any force majeure event. However, if the force majeure event continues to affect performance for more than three (3) business days, the Village may immediately terminate this Agreement. In the event of such termination, the Contractor shall be paid for services satisfactorily performed under this Agreement up to the effective date of termination and shall be entitled to reimbursement of any expenses already incurred and not recoverable by refunds.

ARTICLE 12: INSURANCE AND INDEMNIFICATION

12.1 Insurance Requirements

12.1.1 The Contractor shall, within ten (10) business days of said receipt of notice of award of the CONTRACT, furnish to the VILLAGE a certificate of insurance showing the VILLAGE, its trustees, officers, directors, agents, employees, representatives and assigns as additional insureds to the General Liability and Automobile Liability policies by appropriate endorsement. Such coverage shall be placed with a provider acceptable to the VILLAGE, which is licensed to do business in the State of Illinois, and that maintains a minimum A. M. Best rating of A VII. The insurance coverage afforded under the CONTRACTOR's General Liability insurance policies shall be primary and non-contributory to any insurance carried independently by the Indemnitees. A Waiver of Subrogation in favor of the Additional Insureds shall apply to General liability and Worker's Compensation. All required insurance shall be maintained by the CONTRACTOR in full force and effect during the life of the CONTRACT, and until such time as all work has been approved and accepted by the VILLAGE. This provision constitutes the VILLAGE's continuing demand for such certificates and endorsement(s) or true and

correct copies thereof and the obligation to provide such insurance coverage shall be in full force and effect during the life of the CONTRACT. Failure of the VILLAGE to request such certificates and endorsements shall not relieve the CONTRACTOR of these obligations to provide insurance.

12.1.2 The amounts and types of insurance required are defined in Exhibit 1, a copy of which is attached hereto and made a part hereof.

12.1.3 CONTRACTOR shall cause each Subcontractor to maintain insurance of the type specified in Exhibit 1. Prior to CONTRACT acceptance, and at any time when requested by the VILLAGE, CONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each Subcontractor and Sub-subcontractor.

12.2 Indemnification

12.2.1 The CONTRACTOR shall indemnify, defend and hold harmless the VILLAGE, its trustees, officers, officials, directors, agents, employees and representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence of the CONTRACTOR, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of said CONTRACTOR, its officers, officials, agents and/or employees arising out of, or in performance of any of the provisions of the Contract Documents, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE, its trustees, officers, officials, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The CONTRACTOR shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities.

12.2.2 The CONTRACTOR shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the VILLAGE and any other indemnified party. The VILLAGE or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the CONTRACTOR shall promptly reimburse the VILLAGE or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the VILLAGE or other indemnified party in connection therewith.

ARTICLE 13: PERFORMANCE AND PAYMENT BONDS

13.1 The CONTRACTOR shall furnish Performance and Payment Bonds acceptable to the VILLAGE in the full amount of the CONTRACT. Bonds shall be from a surety licensed to do business in Illinois and said surety shall have a minimum A.M. Best rating of A-V. Each Bond shall require a time period during which the Bond can be called limited only to the extent required by Illinois law.

ARTICLE 14: EXECUTION OF CONTRACT

14.1 Execution of the CONTRACT between Village and Contractor is contingent upon receipt of required Certificates of Insurance, required signed certifications and required Performance and Payment Bonds.

ARTICLE 15: CHANGES IN THE WORK

15.1 All changes in the WORK must be approved by the VILLAGE in a written document. Any change order or series of change orders that increase or decrease the Contract Sum by a total of \$10,000 or more or that increase or decrease the Contract Time by thirty (30) days or more must be accompanied by a written determination signed by the VILLAGE or its designee finding that the change was not reasonably foreseeable at the time the CONTRACT was signed, the change is germane to the CONTRACT or the change is in the best interest of the VILLAGE. Any change increasing the original Contract Sum by fifty percent (50%) or more must be re-bid by the VILLAGE as required by law.

ARTICLE 16: TERMINATION

16.1 The VILLAGE may, at any time, terminate the CONTRACT for the VILLAGE's convenience and without cause upon written notice to the CONTRACTOR and payment for all Work directed to be performed prior to the effective date of termination along with reasonable overhead and profit.

contractor

By: Rolly Persenico Date: 02/25/21

Print Name & Title: Rolly Persenico Account Manager

VILLAGE OF ORLAND PARK

By: 

Date: 3-2-21

Print Name: George Koczwar, Village Manager

EXHIBIT 1

Insurance Requirements

WORKERS COMPENSATION & EMPLOYER LIABILITY

STATUTORY coverage for all persons whom the CONTRACTOR may employ directly or through subcontractors in carrying out the WORK under this CONTRACT. Such insurance shall hold the VILLAGE free and harmless of all personal injuries of all persons whom the CONTRACTOR may employ directly or through Subcontractors

\$1,000,000 – Each Accident \$1,000,000 – Policy Limit
\$1,000,000 – Each Employee
Waiver of Subrogation in favor of the Village of Orland Park

AUTOMOBILE LIABILITY

\$1,000,000 – Combined Single Limit
Additional Insured Endorsement in favor of the Village of Orland Park

GENERAL LIABILITY (Occurrence basis)

\$1,000,000 – Each Occurrence \$2,000,000 – General Aggregate Limit
\$1,000,000 – Personal & Advertising Injury
\$2,000,000 – Products/Completed Operations Aggregate
Additional Insured Endorsement & Waiver of Subrogation in favor of the Village of Orland Park

EXCESS LIABILITY (Umbrella-Follow Form Policy)

\$2,000,000 – Each Occurrence \$2,000,000 – Aggregate
EXCESS MUST COVER: General Liability, Automobile Liability, Employer's Liability

Any insurance policies providing the coverages required of the Contractor shall be specifically endorsed to identify "The Village of Orland Park, and their respective officers, trustees, directors, employees and agents as Additional Insureds on a primary/non-contributory basis with respect to all claims arising out of operations by or on behalf of the named insured." If the named insureds have other applicable insurance coverage, that coverage shall be deemed to be on an excess or contingent basis. The policies shall also contain a Waiver of Subrogation in favor of the Additional Insureds in regards to General Liability and Workers Compensation coverage's. The certificate of insurance shall also state this information on its face. Any insurance company providing coverage must hold an A VII rating according to Best's Key Rating Guide. Permitting the contractor, or any subcontractor, to proceed with any work prior to our receipt of the foregoing certificate and endorsement however, shall not be a waiver of the contractor's obligation to provide all of the above insurance.

PREFERRED SERVICE PLAN
Agreement: Village of Orland Park

Proposal Date: January 18, 2021

BY AND BETWEEN:

AUTOMATIC BUILDING CONTROLS
3315 Algonquin Road
Rolling Meadows, Illinois 60008

AND

VILLAGE OF ORLAND PARK
14700 Ravinia Avenue
Orland Park, Illinois 60462

This proposal is firm for 60 days and shall include the selected Facility Management System Services, Labor Rates, and the Terms and Conditions of sale for the customized proprietary software control system designed by Automatic Building Controls, LLC for Alerton/Distech Technologies.

SCOPE OF SERVICES (1)

- Quarterly (4) half-day visits by a qualified representative for purposes of customizing and enhancing the DDC programming, inspection/calibration, preventative maintenance, and hands-on operator training per year;
- Twenty-four (24) hours of unscheduled engineering labor to be used at the discretion of the Village of Orland Park personnel during regular business hours;
- Unlimited hours of on-line network and telephone support services per year;
- Software and database protection service;
- Preferred Customer rates for any additional projects, services, and materials for the **Alerton/Distech Technologies Facility Management Systems** and associated components as installed by Automatic Building Controls LLC at

Frederick T. Owens Village Hall
Orland Park Civic Center
Franklin E. Loebe Recreation Center

SERVICES SHALL COMMENCE: March 1, 2021 and continue for until **February 28, 2024**

CHARGES: The total charges for the services defined above are **\$5,911.00** per year for the first two (2) years. There will be a 3% increase for the third year for a total of **\$6,088.00**

SCOPE OF SERVICES (2)

- Quarterly (4) half-day visits by a qualified representative for purposes of customizing and enhancing the DDC programming, inspection/calibration, preventative maintenance, and hands-on operator training per year;
- Twenty-four (24) hours of unscheduled engineering labor to be used at the discretion of the Village of Orland Park personnel during regular business hours;
- Unlimited hours of on-line network and telephone support services per year;
- Software and database protection service;
- Preferred Customer rates for any additional projects, services, and materials for the **Alerton/Distech Technologies Facility Management Systems** and associated components as installed by Automatic Building Controls LLC at

VILLAGE OF ORLAND PARK POLICE HEADQUARTERS



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sustainability

Automatic Building Controls, LLC

3315 Algonquin Road Suite 550
Rolling Meadows Illinois 60008
O | 847.296.4000 F | 847.296.4093
www.ab-controls.com

SERVICES SHALL COMMENCE: March 1, 2021 and continue for until **February 28, 2024**

CHARGES: The total charges for the services defined above are **\$5,911.00** per year for the first two (2) years. There will be a 3% increase for the third year for a total of **\$6,088.00**

SCOPE OF SERVICES (3)

- Quarterly (4) half-day visits by a qualified representative for purposes of customizing and enhancing the DDC programming, inspection/calibration, preventative maintenance, and hands-on operator training per year;
- Twenty-four (24) hours of unscheduled engineering labor to be used at the discretion of the Village of Orland Park personnel during regular business hours;
- Unlimited hours of on-line network and telephone support services per year;
- Software and database protection service;
- Preferred Customer rates for any additional projects, services, and materials for the **Alerton/Distech Technologies Facility Management Systems** and associated components as installed by Automatic Building Controls LLC at

VILLAGE OF ORLAND PARK SPORTSPLEX

SERVICES SHALL COMMENCE: March 1, 2021 and continue for until **February 28, 2024**

CHARGES: The total charges for the services defined above are **\$5,911.00** per year for the first two (2) years. There will be a 3% increase for the third year for a total of **\$6,088.00**

SCOPE OF SERVICES (4)

- Quarterly (4) half-day visits by a qualified representative for purposes of customizing and enhancing the DDC programming, inspection/calibration, preventative maintenance, and hands-on operator training per year; for the **143rd Street Metra Station**.
- Quarterly (4) full-day visits by a qualified representative for purposes of customizing and enhancing the DDC programming, inspection/calibration, preventative maintenance, and hands-on operator training per year; for the **Cultural Arts Center**.
- Unlimited hours of on-line network support services per year;
- Software and database protection service;
- Preferred Customer rates for any additional projects, services, and materials for the **Alerton/Distech Technologies Facility Management Systems** and associated components as installed by Automatic Building Controls LLC at

143rd Street Metra Station. Cultural Arts Center

SERVICES SHALL COMMENCE: March 1, 2021 and continue for one year until **February 28, 2024**

CHARGES: The total charges for the services defined above are **\$7,096.00** per year for the first two (2) years. There will be a 3% increase for the third year for a total of **\$7,309.00**

Automatic Building Controls, LLC
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First Year (2021-22) Service Contract Total Cost:.....\$24,829.00

Second Year (2022-23) Service Contract Total Cost:.....\$24,829.00

Third Year (2023-24) Service Contract Cost:.....\$25,573.00

PREFERRED BILLING: (An invoice will be issued in advance on the first day of the period)

Please choose from the following payment options:

_____ Annually or ✓ _____ Quarterly or _____ Semi Annually

Proposed by:

AUTOMATIC BUILDING CONTROLS, LLC

Rolly Persenico
Name

Rolly Persenico 1/18/21
Signature Date

Accepted by:

VILLAGE OF ORLAND PARK

George Kaczura, Village Manager
Client Name

[Signature] 3-2-21
Signature Date



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PREFERRED SERVICE PLAN FOR

VILLAGE OF ORLAND PARK

Orland Park, Illinois

ALERTON/DISTECH TECHNOLOGIES
FACILITY MANAGEMENT SYSTEMS

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FACILITY MANAGEMENT SYSTEM SERVICES

Village of Orland Park

PRIMARY SERVICES

- ☒ **Account Manager** - A Designated Account Manager will be responsible for your total Customer satisfaction. Your Account Manager will provide or supervise the designated services and consult with you to meet your unique needs and objectives.
- ☒ **System and Service Review** - Automatic Building Controls will hold an annual, formal review upon request of you or your staff to discuss the services performed during the past year and to recommend improvements and options to enhance system performance, resolve operational problems, and to meet your changing needs and objectives.
- ☒ **Hands-on Training, Operational Verification, and DDC Programming Customization/Enhancement.** Scheduled visits by a qualified representative shall ensure that your staff receives valuable hands-on training and your building operates at an optimal efficiency and level of comfort.
- ☒ **Software Services** - Automatic Building Controls will furnish and install manufacturer's software revisions to maintain or improve present performance within the functional capabilities of your system. New software products shall be available for sale.
- ☒ **Master Database Protection & Storage** - Automatic Building Controls will protect your database by periodically saving this information and maintaining a copy on our premises. Database saves will be made following all programming changes.
- ☒ **Unlimited On-Line Modem Services and Technical Support** - Automatic Building Controls will provide you with on-line assistance to troubleshoot your system and identify/resolve operational problems.

This service requires the necessary on-line equipment to enable our personnel to remotely log-on to your system via regular voice grade phone line. Owner shall be responsible for installation and maintenance of voice-grade phone line.
- ☒ **System and Service Log / Documentation** - Automatic Building Controls will provide you with a log for you to document concerns, system problems, and other related items requiring our attention. Each scheduled service visit shall begin with a review of this log. All scheduled and unscheduled service visits will be documented by a work order form, listing materials used and hours spent. All work orders will be signed by an authorized client representative to verify all work completed. For your staff's convenience, copies of all work orders and our service agreement scope will be kept in your System and Service Log.
- ☐ **Operator Training** - Automatic Building Controls shall provide ___ hours of formal operator training.
- ☒ **Repair / Replacement Labor** - Automatic Building Controls shall provide **72 hrs per year** labor to repair or replace failed components with new components of compatible design and to address unscheduled service calls. If premium time emergency service is not chosen, labor shall be invoiced after hours and weekends at a rate equal to the premium rates less the straight time rates.
- ☐ **Repair / Replacement Material** - Automatic Building Controls shall provide _____ of material to repair or replace failed components with new components of compatible design.
- ☐ **Premium Time Emergency Service/Remote Monitoring** - Emergency repair calls covered by this agreement shall be made 365 days a year, 24 hours a day. Critical building alarms, as defined by Customer, shall automatically indicate an alarm condition remotely that shall be addressed by Automatic Building Controls service personnel.

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