

VILLAGE OF ORLAND PARK
PROFESSIONAL SERVICE AGREEMENT—INTERIM PUBLIC WORKS DIRECTOR

This Agreement (“Agreement”) is made and entered into this ____ day of ____, 2020, by and between the Village of Orland Park, Illinois (“Village”), a municipal corporation of the State of Illinois, and WRB, LLC, an Illinois Limited Liability Company (“Contractor”). The Village and Contractor are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”.

In consideration of the terms, conditions, and mutual covenants set forth herein, the Parties agree as follows:

Section 1: Term

This Agreement shall commence on March 16, 2020 and terminate on September 16, 2020, unless earlier terminated by the Village or Contractor as provided by this agreement. The term of this agreement may be extended thereafter by the Parties on a month to month basis upon the same terms and conditions set forth in this agreement.

Section 2: Services

- A. The Contractor shall provide the Village with Interim Public Works Director services: (1) as outlined in the municipal code and state law; (2) in accordance with all Village policies; (3) in accordance with the Village of Orland Park position description as set forth on Exhibit A; and (4) consistent with the proposal attached as Exhibit B. (the “Services”). The terms of this Agreement shall control in the event of any conflict between the terms of this Agreement and Exhibit B. Contractor agrees that William Balling shall perform all Services contemplated under this Agreement on an as-needed basis and at the direction of the Village Manager or his designee.
- B. The Contractor shall provide an average of thirty-five (35) hours of Services per week. The Contractor is expected to be present generally between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday at the Village of Orland Park Public Works Department. Hours may be adjusted at the discretion of the Village Manager or his designee. Contractor shall at all times faithfully, competently, and to the best of his ability, experience and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.
- C. The Contractor acknowledges and agrees that the Village shall not be liable for any costs incurred by the Contractor in connection with any services provided by the Contractor that are outside the scope of this Agreement (“Additional Services”), regardless of whether such Additional Services are requested or directed by the Village, except upon the prior written consent of the Village Manager or his designee..

Section 3: Independent Contractor Status

- A. The Contractor is retained by the Village for the purposes of providing the Services as set forth in this Agreement, and the Contractor's relationship to the Village shall, during the term of this Agreement and the period of his Services hereunder, be that of an independent contractor.
- B. The Contractor shall have the sole control over the ways and means of performing the Services referred to in this Agreement. The Contractor shall be free to dispose of such portion of the Contractor's time, energy and skill when the Contractor is not obligated to devote time to performing his Services hereunder to the Village, in such manner as the Contractor sees fit and, to such persons, firms, or corporations as the Contractor deems advisable; provided, however, that the Contractor shall not perform any work for any person, firm, or corporation that is a vendor for the Village or any work that constitutes a conflict with the interests of the Village. It is acknowledged that, at all times, the Contractor is separate and independent from the Village and that the Contractor will utilize a high level of skill necessary to perform the Services under this Agreement.
- C. The Contractor shall not be considered as having an employee status with the Village, nor shall the Village make any deductions or withhold any sums for the payment of any and all applicable federal, state, local and other taxes, income taxes, or FICA taxes. The Contractor shall not be entitled to receive or participate in any employee plans, benefit programs, retirement plans or related employee benefit arrangements, or any other benefits provided to or for employees of the Village, as set forth in the Village's Personnel Policy Manual or applicable to employees under law. As an independent contractor, it is the responsibility of the Contractor to file all necessary tax returns (federal, state, county and local) and to make such required deductions and pay all income tax, social security, and any and all other taxes due as an independent contractor in his profession. As an independent contractor, the Contractor agrees that he is ineligible to file a claim for unemployment compensation benefits or for workers compensation benefits against the Village and agrees not to file any claims in the event this Agreement is terminated or he is injured performing any Services under this Agreement. The Contractor agrees to assume all risk of death, illness and injury relative to performing any Services under this Agreement. The Contractor is an independent contractor and not the Village's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act and the Worker's Compensation Act (820 ILCS 305/1, et seq.), or any other federal or state laws pertaining to employees.

Section 4: Compensation for Services

- A. Village agrees to pay Contractor for the Services provided pursuant to this Agreement the amount of \$190.00 per hour, plus a 12% overhead factor for a total bill rate of \$212.50 per hour, for the services of William Balling. In the event that the Village agrees that Additional Services shall be supplied by an Associate Contractor, the Associate

Contractor shall be billed at the rate of \$130.00 per hour plus a 12% overhead factor for a total bill rate of \$145.60 per hour.

- B. Project services shall be invoiced monthly, in accordance with this Agreement. Payment for all non-disputed fees will be made pursuant to the Illinois Local Government Prompt Payment Act. The Contractor shall maintain records showing actual time devoted and type of work performed for all services performed under this Agreement. Such records shall be provided to the Village Manager as required herein in a format acceptable to the Village.

Section 5: Confidential Information

- A. The term “Confidential Information” shall mean information in the possession or under the control of the Village relating to the technical, business or corporate affairs of the Village; the Village property; user information, including, without limitation, information contained or stored within the Village's computer system, including and without limitation any information obtained from server logs or other records of electronic or machine readable form.
- B. The Contractor acknowledges that it shall, in performing the Services for the Village under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Contractor shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the Village Manager or his/her designee.

Section 6: Insurance and Indemnification

- A. The Village will not provide any form of insurance coverage, including but not limited to health insurance, worker's compensation insurance, auto insurance, general liability insurance, errors and omissions insurance, or professional liability insurance for or on behalf of the Contractor relative to the performance of the Services under this Agreement.
- B. The Contractor, at its/his/her own cost, shall provide all of its/his/her own insurance coverages as applicable to the Services being performed, including but not limited to health insurance, worker's compensation insurance, auto insurance, general liability and property insurance, errors and omissions insurance, or professional liability insurance relative to the performance of the Services under this Agreement. The Contractor's policy or policies of insurance shall specifically recognize and cover the indemnification obligations under this Agreement. Said insurance shall provide that the insurance provided by the Contractor shall be on a primary non-contributory basis and that any provision of any contract of insurance or other risk protection benefit or self-insurance policy purchased or in effect or enacted by the Village and any other insurance or benefit of the Village shall be in excess of the Contractor's insurance and shall not contribute to it. Any deductions or self-insured retention must be declared to and approved by the Village.
- C. The Village, its officers, officials, and employees are to be covered as additional insureds for liability arising out of services and/or work performed by the Contractor.

- D. To the fullest extent permitted by Illinois law, the Contractor shall indemnify, defend and hold harmless the Village and its officers and officials, agents, and employees from all claims, demands, lawsuits, actions, costs of any kind, caused by, resulting from, arising out of or occurring in connection with the Contractor's performance of the Services under this Agreement.
- E. The Contractor assumes all liability for personal injuries or illness of any kind or death that might occur to itself/himself/herself while acting under this Agreement. The Contractor assumes all liability and responsibility for his personal property while performing any work or Services under this Agreement.
- F. No appointed official, agents, attorneys, employees, volunteers and representatives of the Village or any of its local government members shall be personally liable, in law or in contract, to the Contractor as the result of the execution of this Agreement.

Section 7: Conflict of Interest

- A. The Contractor represents and certifies that, to the best of its knowledge: (1) no elected or appointed the Village official, employee or agent has a personal financial interest in the business of the Contractor or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement, neither the Contractor nor any person employed or associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Contractor nor any person employed by or associated with the Contractor shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.
- B. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Contractor is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq. The Contractor represents that the only persons, firms or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm or corporation. If at any time it shall be found that the Contractor has, in procuring this Agreement, colluded with any other person, firm or corporation, then the Contractor shall be liable to the Village for all loss or damage that the Village may suffer, and this Agreement shall, at Village's option, be null and void.

Section 8: Compliance with Laws

The Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be

required in connection with providing, performing and completing the Services, and with all applicable statutes, ordinances, rules and regulations, including, without limitation: any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. The Contractor shall also comply with all conditions of any federal, state or local grant received by the Village or the Contractor with respect to this Agreement or the Services. Further, the Contractor shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.

Section 9: Licenses

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

Section 10: No Third-Party Agreements without Village Approval

The Village shall not be liable to any vendor or third party for any agreements of any kind made by the Contractor without the knowledge and prior written approval of the Village Manager or his designee..

Section 11: Mutual Cooperation

The Village agrees to cooperate with the Contractor in the performance of the Services, including meeting with the Contractor and providing the Contractor with direction and such information that the Village may have that may be relevant and helpful to the Contractor's performance of the Services. The Village will provide suitable office and support equipment needed to carry out the Services. Transportation will be provided by the Contractor in his own vehicle. The Contractor agrees to cooperate with the Village in the performance and completion of the Services.

Section 12: News Releases

The Contractor shall not issue any news releases, advertisements or other public statements regarding the Services or this Agreement without the prior written consent of the Village Manager or his designee.

Section 13: Intervening Law

Notwithstanding any provision of this Agreement to the contrary, in the event that any Party receives notice ("Notice") of an actual or threatened decision, finding or action by any governmental or private agency or court (collectively, an "Action"), which legislation, law or Action, if or when implemented, would have the effect of subjecting either party to civil action under state and/or federal law or other adverse proceeding because of their participation in this Agreement, this Agreement shall be subject to termination without penalty upon the earlier of:

(a) 30 days following the date upon which any Party gave written notice to the other or (b) the effective date on which the law or Action prohibits the relationship of the Parties pursuant to this Agreement.

Section 14: Termination

- A. Either Party may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the non-terminating Party.
- B. This Agreement shall automatically terminate when:
 - 1. Both a Director of Public Works and an Assistant Director of Public Works are appointed by the Village Manager; or
 - 2. Contractor receives written notified from the Village Manager or his designee that he has failed to perform the Services to the satisfaction of Village Manager or his designee or the Village Board; or
 - 3. Contractor enters into an employment or contractual agreement with a known vendor of the Village of Orland Park; or
 - 4. The termination date as set forth in Section 1 herein occurs.

Section 15: Freedom of Information Act.

Section 7(2) of the Illinois Freedom of Information Act ("FOIA") (5 ILCS 120/7(2)) requires certain records that qualify as "public records," which have been prepared by and are in the possession of a party who has contracted with the Village, be turned over to the Village so that a FOIA requestor can inspect and photocopy the non-exempt portions of the public records pursuant to a FOIA request. The Village has a very short period of time from receipt of a FOIA request to comply with the request, and it requires sufficient time to collect and review the records to decide what information is or is not exempt from disclosure. The Contractor acknowledges the requirements of FOIA and agrees to comply with all requests made by the Village 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 within two (2) business days of the request being made by the Village. The Contractor agrees to indemnify and hold harmless the Village from all claims, costs, penalty, losses and injuries arising out of or relating to its failure to provide the public records to the Village under this Agreement.

Section 16: Notices

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one (1) business day after deposit with an overnight courier, as evidenced by a

receipt of deposit; or (c) four (4) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other Party, but no notice of a change of addressee or address shall be effective until actually received. Additionally, notices sent by any other means (i.e., facsimile, email, etc.) may be acceptable subject to written confirmation of both the transmission and receipt of the notice.

VILLAGE: Village of Orland Park
Attention: Village Manager
14700 Ravinia Avenue
Orland Park, IL 60462

CONTRACTOR: WRB, LLC
Attention: William Balling
412 S. Prindle Avenue
Arlington Heights, IL 60004

Section 16: General Provisions

- A. Entire Agreement. This Agreement sets forth and establishes the entire understanding between the Village and the Contractor. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.
- B. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the Village and the Contractor in accordance with all applicable statutory procedures.
- C. Assignment. The Contractor understands that this Agreement is a contract for the personal services of the Contractor and that it is made by the Village in reliance of the Contractor's personal skill and knowledge in the activity to be conducted, and as represented by the Contractor. Accordingly, this Agreement is non-assignable by the Contractor.
- D. Waiver. Neither the Village nor the Contractor shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interests from time to time. The failure of the Village or the Contractor to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Contractor's right to enforce such rights or any other rights at any time.
- E. Governing Laws. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois. Venue shall be in the Circuit Court of Cook County.
- F. Severability. The invalidity or partial invalidity of any portion of this Agreement will void this agreement.
- G. Limitations on Contractor's Remedies and Damages. It is specifically recognized, understood and agreed between the Parties that in the event that the Village is in any way deemed to be in breach of this Agreement or any provisions or terms of it, the only claim, suit or action that may be brought against the Village, its officers, officials, agents and employees is a breach of contract claim for money damages only, and that in the event of a violation by the Village of this Agreement the Village will pay, at most, as liquidated damages to Contractor, the sum of money that Contractor would otherwise be entitled to under the Compensation for Services paragraph above. The Parties further recognize and agree that the different types of

claims that could possibly be made by Contractor are difficult of ascertainment, and it is the specific intention of the Parties that the Village, its officers, commissioners, agents and employees shall never at any time be held liable to Contractor or his heirs or successors for any amount of money that is greater than the amount identified in the Compensation for Services paragraph above.

In recognition and agreement that his damage award against the Village may be limited, and except for that amount identified in the Compensation for Services paragraph above, Contractor hereby forever waives, releases and dismisses the Village, its officers, officials, agents and employees of and from any and all claims, debts, dues and obligations of every kind and nature that it may have either directly or indirectly that arises or grows out of or may arise or grow out of this Agreement. Contractor specifically waives and releases the Village, its officers, officials, agents and employees from any and all claims, debts, dues and obligations of every kind and nature under the Illinois and United States Constitutions as well as under any federal or state statute or law, including but not limited to the Civil Rights Act. Contractor further waives all remedies which are available to it for the violation of any of the terms of this Agreement, including but not limited to the equitable remedy of specific performance, and agrees not to seek injunctive relief of any sort. Except for a breach of contract claim for money damages as set forth above, which damages are limited, I Contractor covenants not to sue the Village, its officers, officials, agents and employees for a violation of any provisions or terms of this Agreement.

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

VILLAGE:
Village of Orland Park,
a municipal corporation

CONTRACTOR:
WRB, LLC

By: _____
George Koczwara, Village Manager

William R. Balling, Managing Director

Attest: _____

Witness: _____