

**MEETING NOTICE
VILLAGE OF TINLEY PARK
MEETING OF THE COMMITTEE OF THE WHOLE**

NOTICE IS HEREBY GIVEN that a Committee of the Whole Meeting of the Village of Tinley Park, Cook and Will Counties, Illinois will be held on Tuesday, December 17, 2019, beginning at 6:15 p.m. in Council Chambers, located in the Tinley Park Village Hall, 16250 South Oak Park Avenue, Tinley Park, Illinois 60477.

The agenda is as follows:

1. CALL MEETING TO ORDER.
2. CONSIDER APPROVAL OF THE MINUTES OF THE COMMITTEE OF THE WHOLE MEETING HELD ON DECEMBER 3, 2019.
3. DISCUSS VERIZON WIRELESS MASTER POLE AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND CHICAGO SMSA LIMITED PARTNERSHIP (D/B/A VERIZON WIRELESS).
4. DISCUSS COOK COUNTY CLASS 7A RECLASSIFICATION FOR RICK WHITE OF PARK RIDGE MIDWEST REALTY GROUP, LLC (BANDANA'S BBQ) AT 16200 HARLEM AVENUE.
5. DISCUSS PARATRANSIT AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND PACE FOR THE "DIAL-A-RIDE" PROGRAM.
6. RECEIVE COMMENTS FROM THE PUBLIC.

ADJOURNMENT

KRISTIN A. THIRION
VILLAGE CLERK

MINUTES
Meeting of the Committee of the Whole
December 3, 2019 – 6:30 p.m.
Village Hall - Council Chambers
16250 S Oak Park Ave.
Tinley Park, IL 60477

Members Present: M. Glotz, Village President Pro-Tem
K. Thirion, Village Clerk
C. Berg, Village Trustee
W. Brennan, Village Trustee
D. Galante, Village Trustee
M. Mueller, Village Trustee (Via Telephone Conference Call)

Members Absent: J. Vandenberg, Village President
W. Brady, Village Trustee

Staff Present: D. Niemeyer, Village Manager
P. Carr, Assistant Village Manager
F. Reeder, Fire Chief
M. Walsh, Police Chief
K. Clarke, Community Development Director
B. Bettenhausen, Finance Director
D. Maiolo, Human Resources Director
H. Lipman, Management Analyst
P. Connelly, Village Attorney

Others Present:

Item #1 - The meeting of the Committee of the Whole was called to order at 6:32 p.m. on December 3, 2019.

President Pro-Tem Glotz stated that Trustee Mueller is participating in this meeting electronically by telephone conference call because of employment purposes. Trustee Mueller is prevented from physically attending this meeting due to employment purposes. Trustee Mueller acknowledged his participation via telephone conference call.

Item #2 - CONSIDER APPROVAL OF THE MINUTES OF THE COMMITTEE OF THE WHOLE MEETING HELD ON NOVEMBER 5, NOVEMBER 12, AND NOVEMBER 18 & 19, 2019. – Motion was made by Trustee Berg, seconded by Trustee Brennan, to approve the minutes of the Committee of the Whole meeting held on November 5, November 12, and November 18 & 19, 2019. Vote by voice call. Ayes: Berg, Brennan, Galante, Glotz, Mueller. Nays: None. Absent: Brady. Village President Pro-Tem Glotz declared the motion carried.

Item #3 - DISCUSS NEW CANNABIS LAW.

Village Manager David Niemeyer presented an update regarding adult use cannabis. He stated following the November 12, 2019, Committee of the Whole discussion on adult use cannabis, the Village posted a survey link for additional resident input on the topic. The survey asked to what extent the respondent supported or opposed the sale of adult use cannabis within the Village.

Management Analyst, Hannah Lipman, presented the results of the survey. In total, over 2,700 surveys were completed. Roughly 68% of respondents somewhat support/strongly support retail dispensaries. About 66% of respondents somewhat support/ strongly support indoor cultivation centers. Similarly, 66% of respondents also somewhat support/strongly support manufacturing facilities. On site consumption had just under 50% who strongly support this use, and an additional 9% who somewhat support it.

The Village extended an invitation to the three (3) companies who had contacted the Village with interest in applying for a license with the state and potentially locating their business in Tinley Park to present at the COW. These three (3) companies were asked to share what the facilities may look like and how they run business operations, while keeping the discussion informational, not promotional.

Jack Killackey, Dispensary GM of Earth Med, presented basic insight on medical, dual use, and recreational dispensaries. Mr. Killackey described the facility area breakdown of the various type's layouts. He spoke to location of dispensaries, as well as, business operations, including day to day operations, inventory of product, consultation with customers, and dispensing of the product. Dispensary security was discussed. Mr. Killackey noted that purchasers must be at least 21 years of age or older.

Trustee Brennan asked how employees are paid and how are their taxes distributed since cannabis is still illegal on the federal level. Mr. Killackey responded that a payroll company is used and employees are not issued 1099 forms.

Trustee Galante asked if there was any issue with banking. Gus Koukoutsakis of Earth Med stated that they have not had any banking issues. Mr. Perez stated that Earth Med has a bank, however not all dispensaries do.

President Pro-Tem Glotz asked if they had been issued an Early Adult Use dispensing license and a Conditional Adult Use dispensing license. Mr. Koukoutsakis responded Earth Med has a dual license and are permitted to sell as of January 1st and it looking for another location.

Trustee Brennan asked where the first location was located. Mr. Koukoutsakis replied Addison.

Trustee Mueller asked if a dispensary is shut down if there is a discrepancy found. Mr. Killackey stated that the dispensary is allowed to stay open. Within a short period of time, the dispensary is allowed to find out where the discrepancy occurred before notifying the state, however any adjustment to the inventory needs to be made through the state and documented.

Trustee Mueller wanted to know if customer information is shared. Medical patient's purchases are tracked. Recreational customers personal identifiers are not allowed to be collected without the customers consent. If the customer consents, Earth Med does not share this information.

Community Development Director Kimberly Clarke asked how dispensaries utilize the storefront and if there are any state laws regarding this. Mr. Killackey responded that this is up to the individual dispensary, but per state law, windows must be tinted. He also noted that most of the product displays are empty packaging.

President Pro-Tem Glotz if there were any other questions from the board or staff for Earth Med. There were none.

At this time Ray Kalinsky, of Pulmonary Exchange stated that his company did not have a presentation but was open to answer questions.

Trustee Glotz asked if he had been issued an Early Adult Use dispensing license and/or a Conditional Adult Use dispensing license. Mr. Kalinsky stated that no licenses have been issued unless they had a previous medical dispensing license issued.

Trustee Brennan asked if he would be applying for a strictly recreational license. Mr. Kalinsky replied yes, as there are no other medical licenses available.

At this time, Judy Taki representing Redemption Botanicals, spoke. She was the owner/operator of a medical dispensary in Champaign, Illinois.

Ms. Taki went over the different types of products and explained that all product received by an Illinois dispensary, medical or recreational, comes prepackaged. It is labeled, lab tested for purity and for the percentage of cannabinoid's and is in a child resistant package. The rules regarding cannabis are the same as alcohol; the package must be sealed when leaving the dispensary, and my not be opened until the purchaser arrives home and it is the responsibility of the agent at the dispensary to educate the purchaser of the Illinois rules.

Attorney Rebecca Wing, representing Redemption Botanicals explained that all cannabis sold in Illinois but be grown and processed in Illinois. She noted the number of States that have legalized medical and/or recreational use and there are 47 licenses available in the Chicago-Naperville-Elgin region which Cook County is included.

Ed Farrell, who provides full service security to dispensaries, went over the states security mandates.

President Pro-Tem Glotz asked if the Illinois State Police have access to the dispensary's security cameras. Ms. Taki explained that they do and before the opening inspection, the IP address must be given to them. President Pro-Tem Glotz also asked if there is security in the dispensary. Mr. Farrell responded that as of January 1st Illinois state law mandates that security is present in the dispensary. President Pro-Tem Glotz asked the number of staff in the dispensary. Ms. Taki replied that the state requires two (2) people, however that would be too few people she would have at least four or five employees.

Mr. Farrell noted that business on a main road has greater exposure and does well. He stated that those stores within a business park can be difficult to find and it can take some time before the business takes off.

President Pro-Tem Glotz noted that Tinley Park is a residential town. He prefers that a dispensary be in a more remote area. President Pro-Tem Glotz asked Mr. Farrell of the dispensaries that he provides security for, has there been any problems at the more remote locations needing police assistance. Mr. Farrell said he has not had any problems at either location.

Trustee Berg stated the dispensaries are non-descript.

Trustee Galante asked about the odor from the cannabis and stated that a recommendation should be made for dispensaries to only be located in standalone buildings. Ms. Taki said that there may be some odor within the vault room, however she did not receive any complaints from the other businesses in the shared building.

Ms. Clarke stated that if the board decided not to opt out the next steps would be zoning.

President Pro-Tem Glotz thanked Donna Framke and her staff for presenting the survey to the citizens. He felt that the survey did not reach as many people as he had hoped and feels that a many of the residents input is missing. He does not feel comfortable on voting on this item at this time.

President Pro-Tem Glotz outlined five (5) options:

1. Place a referendum on the March ballot;
2. Vote on as is and decide if there will be any restrictions;
3. Opt-out;
4. Make it very restrictive so licenses cannot be obtained until results from other towns can be evaluated; and
5. Send a mailer to all residents so that all voices can be heard.

Dave Niemeyer, Village Manager, responded that the board can opt-in, opt-out and revisit this item, go to referendum or do another survey.

Pat Connelly, Village Attorney, recommended that if the goal is to gather more input, he recommends that the Board pass a moratorium on the licenses before the first of the year.

Trustee Brennan is in favor of a referendum. If the Board opts-out with the approach to see how other communities are effected before opting-in with careful and strategic approach to zoning and maximize tax revenues.

Mr. Connelly noted that if a referendum will be used, language will need to be decided on rather quickly and this item would need to be placed on the next Village Board meeting.

Clerk Thirion concurred with Trustee Brennan.

Trustee Mueller is in favor of opting in with restrictive zoning.

Trustee Galante concurs with Trustee Mueller. Her concern is the Village could miss out on one of the 47 licenses offered by the State.

Trustee Berg is in favor of opting in and begin working the zoning.

Trustee Glotz is in favor of putting a referendum on the March 17, 2020 ballot.

Mr. Connelly recommended that a vote on the moratorium should be taken before January 1st if more time is needed to make a decision. He stated that a moratorium is the most efficient next step. A vote on the moratorium should be taken at the next Village Board meeting.

Mr. Niemeyer concurred with the Village Attorney.

After discussion it was the consensus of the Board to place an item for moratorium for allowing dispensaries for recreational cannabis in the Village on the December 17, 2019, Village Board meeting agenda and to direct the Community Development staff to begin working on the zoning for these dispensaries.

President Pro-Tem Glotz opened Public Comment regarding the cannabis item.

A resident inquired about frosted windows, handicap accessible parking and the layout of a dispensary. He also stated that the greatest survey would be a vote of the residents, not an online survey.

A resident asked Ms. Taki if she was representing medical or recreational cannabis. Ms. Taki replied she is applying for an Adult Use license. She also asked if she had any statistics on the accident rates within one hour of cannabis use. Ms. Wing explained that cannabis may not be consumed on the premises or in their vehicle therefore there are no statistics. She also asked if there was a sobriety test. Ms. Wing stated there is not. Police Chief Walsh explained current protocol will be used. If necessary, blood will be drawn. She expressed her opposition to dispensaries in the Village.

A resident stated that there is time for the board to make decision as dispensaries will not be able to open on January 1st. She also commented on banking and financial tracking.

A resident commented on on-site consumption and packaging.

The board thanked the representatives for attending.

Item #4 - DISCUSS AMENDMENTS TO PERSONNEL MANUAL. – Hannah L. presented changes to the personnel manual that were discussed at the September 10th Admin and Legal Committee were the following:

1. Holidays: Continue to recognize 11 holidays. However, beginning in 2020, change Good Friday to a half-day holiday and make Christmas Eve a full day holiday. *Impacts current, eligible staff.*
2. Tuition Reimbursement: Continue practice which requires approval by Department Head & Village Manager. However, for classes beginning after 1/1/20 (that have not already been approved by the Village Manager), the Village will reimburse 80% for 'A'; 70% for 'B'; 50% for 'C'. Must remain employed for two (2) years or employee reimburses the Village 100%. *Impacts current, eligible staff.*
3. Vacation: Only impacting *eligible, new hires* beginning 1/1/20, the schedule would be as follows. Borrow in advance request is eliminated, as staff will accrue time beginning on hire date.
 - a. Executive Level Management: 22 days for 1-6 years of service; 25 days for 15+ years of service
 - b. Civil Service and FT Appointed staff: 10 days for 1-6 years of service; 15 days for 7-10 years of service; 20 days for 11-14 years of service; 25 days for 15+ years of service
4. Sick and Disability: Staff recommended *eligible, new hires* would accrue sick time per pay period, up to 80 hours (10 days) per anniversary year. Accrued time could accrue into a sick bank up to 480 hours (60 days).

Of the four (4) topics, sick and disability warranted further discussion. Staff has suggested the following options:

Option (1): Similar to the current Ordinance practice, but limited to full pay only, eliminating partial compensation. Continue to group by years of service, but reduce time awarded.

- No sick days may be awarded, accrued or carried over from year to year.
- Eligible employees must have completed a minimum of six (6) months uninterrupted service with the Village in order to qualify.

- If any eligible employee shall have received the full benefit provided to him/her based off service years, he or she will then be ineligible for additional sick and disability payments until afforded the benefit by reaching the next anniversary year.
- This option provides eligible employees the opportunity to apply for benefits already afforded them through Illinois Municipal Retirement Fund (IMRF).
- Employees are not eligible if he/she is on layoff, suspension, or approved leave of absence without pay, for thirty (30) days or more.

Option (1a): A variation to option (1) would be to group by years of service, similar to the current Ordinance practice, but cap the benefit schedule at five (5) weeks maximum.

Option (2): Allow eligible employees to accrue (earn) 80 hours per year (10 days), beginning date of hire (accrued per pay period).

- Maximum of eighty (80) hours of paid sick leave per year. This recommendation of hours is consistent with market data.
- Unused sick time at the end of each year carries over into a 'bank' for the employee to use as needed.
- The number of banked time may not exceed 480 hours (60 days).
- Upon separation from employment, IMRF members may apply the balance of their sick bank toward IMRF service credit (max of 480 hours or (60) days).

Option (2a): A variation to option (2) would be to award employees 64 hours per year (8 days), and allowing sick leave to be carried over into a bank not to exceed 320 hours (40 days).

By means of comparison, Orland Park credits eligible employees with 64 hours annually (or 8 days). Employees are encouraged to be prudent in using this sick benefit, as they can carry over unused sick leave each year. Upon retirement, Orland Park pays the employee the current hourly rate or equivalent for every hour of sick time in excess of six hundred (600) hours, which the employee has accrued. While adopting a similar system of paying out employees could be an option, it is not recommended.

Option 3: Allow eligible employees up to ten (10) sick days per calendar year. Days are not accrued, and there is no sick bank or carry over.

Based on these parameters, employees with extended illnesses would be required to use personal and vacation days for additional paid time off. Once all personal and vacation time is exhausted, an employee can apply for IMRF temporary disability benefits. IMRF temporary disability benefits become effective after thirty (30) days without pay (on the 31st day) following the date an employee becomes disabled, if that employee is no longer receiving salary, sick, or vacation pay from the Village. This option—which is not in line with other communities—could potentially have a negative impact on recruitment, particularly for mid upper level positions.

Any changes to sick and disability will only impact full time, non-collectively bargained, new hires. With that being said, the current Sick and Disability Ordinance applies to collective bargaining units, and therefore, negotiations would be required in order to make any future changes.

Motion was made by President Pro-Tem Glotz, seconded by Trustee Brennan, to recommend Option 3 above regarding sick days. Also recommended are staff recommendations regarding holidays, tuition reimbursement, and vacation time. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #5 - DISCUSS AMENDMENT TO TITLE III CHAPTER 43 OF THE TINLEY PARK MUNICIPAL CODE ENTITLED “PUBLIC COMMENT”.

– P. Connelly presented the proposed amendments to public comment policy. Changes are being proposed to be in line with the most recent decisions from the Attorney General’s office.

1. The purpose of this policy is to ensure that citizens are allowed time to present their views pertaining to issues concerning the Village of Tinley Park while permitting the Board Committee or Commission to conduct their meetings in an effective manner.
2. All public comments are limited to six (6) minutes, and each person shall only be permitted to speak once; however, at Regular and Special Village Board meetings each person shall be allowed to speak once in accordance with this policy, on each agenda item other than consent agenda items that are presented for final adoption. All public comment at special Village Board, Special Commission, or Special Committee Meetings must be germane to items on that particular Special meeting.
3. The Chairperson shall preserve order and decorum. Any person who engages in threatening or disorderly behavior when addressing a Board, Commission, or Committee shall be deemed out-of-order by the Chairperson and their time ceased to address the Board, Commission, or Committee at said meeting.

President Pro-Tem Glotz asked if there was any comments from the Board. There were none.

Motion was made by President Pro-Tem Glotz, seconded by Trustee Brennan to recommend adopting the proposed amendments, to Title III, Chapter 43 of the Tinley Park municipal code entitled “Public Comment” to the board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #6 - DISCUSS SEWER ASSESSMENT CONTRACT. – Dave N. explained that this project was awarded to Sewer Assessment Services of Schaumburg approximately 18 months ago. The work was successfully completed in a timely and accurate manner. However, it was determined that the contract with the recommended contractor had not been submitted for Village Board approval before the work was undertaken.

Motion was made by President Pro-Tem Glotz, and seconded by Trustee Berg, to recommend approval of a contract, to perform sanitary sewer investigations to Sewer Assessment Services, LLC, to the board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #7 - DISCUSS A SUBAWARD AGREEMENT WITH THE COUNTY OF COOK - HOMELAND SECURITY (ALPR TECHNOLOGY SYSTEM PROJECT).

– Pat Carr, Assistant Village Manager, provided the next step required to accept the Homeland Security Grant is to pass resolution 2019-R-116 accepting the award from Cook County to the Village. In July of 2019, the Village was notified of the pending award of \$233,000 with a Village match of \$20,000 for the automatic license plate recognition (ALPR) Technology System Project.

President Pro-Tem Glotz asked if there was any comments from the Board. There were none.

Motion was made by Trustee Brennan, and seconded by Trustee Galante, to recommend approval the Cook County Homeland Security (ALPR Technology System Project) to the Village Board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #8 - DISCUSS COOK COUNTY MULTI-JURISDICTIONAL ALL HAZARDS MITIGATION PLAN.

– Pat C., presented the resolution updating the multi-jurisdictional hazards mitigation plan. Beginning in 2011, the Tinley Park Emergency Management department, under the direction of Cook County Emergency Management and Regional Security began the planning and development process for a multi-jurisdictional hazard mitigation program (HMP). Resolution 2019-R-118 is the five (5) year update to this plan which was approved by the Illinois Emergency Management Agency and the Federal Emergency Management Agency, Region V.

President Pro-Tem Glotz asked if there was any comments from the Board. There were none.

Motion was made by Trustee Brennan, and seconded by Trustee Berg, to recommend approval of the Cook County Multi-Jurisdictional All Hazards Mitigation Plan, to the Village Board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #9- DISCUSS PARATRANSIT AGREEMENT WITH PACE. – Motion was made by Trustee Mueller, seconded by Trustee Brennan, to postpone this item to the December 17, 2019 Committee of the Whole meeting. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #10 - DISCUSS ETHICS CODE REVISIONS. – Dave N., presented an overview of the duplicative nature of the Village's economic disclosure statement with the Cook County disclosure statement. He also made note of the costs involved with the Village's disclosure statement. Mr. Niemeyer recommended that the Village officials continue to adhere to the Cook County system with nothing beyond those requirements. Mr. Connelly concurred with Mr. Niemeyer and presented Ordinance 2019-O-080, amending Title III, Chapter 39, Sections 14-20 pertaining to Annual Ethics Disclosure.

- A. For purpose of this Section 14, each elected official of the Village, and certain appointees and employees are required by 5 ILCS 420/4A-101 to file a statement of economic interest.
- B. By May 1 of each year, each such elected official, appointee and employee shall file a photocopy of the Statement of Economic Interest as required by 5 ILCS 420/4A-101 that is required to be filed with the County Clerk. Such statement shall be filed with the Village Clerk. If a person required to file such statement fails to file by May 1 of any year, the Village Clerk shall notify such person with seven days after May 1 of his or her failure to file and such person shall not be considered in violation of this Article until May 15 of any year for failure to file such statement.

Trustee Mueller asked if the Village's current disclosure statement went above and beyond the Cook County's disclosure statement. Mr. Niemeyer and Mr. Connelly stated that it does.

President Pro-Tem Glotz asked if there was any comments from the Board. There were none.

Motion was made by President Pro-Tem Glotz, seconded by Trustee Brennan, to recommend approval of the revisions to Title III Chapter 39, Sections 14-20 Pertaining to the Annual Ethics Disclosures, to the Village Board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #11 - RECEIVE UPDATE ON RESPONSIBLE BIDDER ORDINANCE. – Mr. Connelly presented an update on the responsible bidder ordinance that will clarify certain aspects of what a responsible bidder is for Public Works contracts, including but not limited to bid submission requirements, incomplete bids and low bids.

President Pro-Tem Glotz asked if there was any comments from the Board. There were none.

Motion was made by Trustee Brennan, seconded by Trustee Glotz to recommend approval, of the amendments to Title V of the Tinley Park Municipal Code and Establishing Chapter 54 Entitled “Responsible Bidder Requirements on Public Works Projects, to the Village Board. Vote by voice call. President Pro-Tem Glotz declared the motion carried.

Item #12 – RECEIVE COMMENTS FROM THE PUBLIC – A retired public works employee expressed concern regarding possible changes to retiree’s spousal medical coverage.

Steven Eberhardt expressed concerns with the Ethics Disclosure and why the proposed Ordinance was not included in the committee packet. Mr. Connelly explained that the while the agenda was released on time, the attorney’s office was working on the ordinance up until the day of the December 3, 2019 Committee of the Whole meeting.

Maury Lapin, an employee asked Mr. Niemeyer to clarify the proposed retirement insurance. Mr. Niemeyer responded that they are still working on the details and should be completed soon.

A resident presented concerns he has with construction dirt and spoils that have been near his property. President Pro-Tem Glotz replied the Community Development Director has been addressing this issue. Mr. Connelly also commented on the complicated nature of the ownership of the property.

Chris Halper, a resident, is producing a documentary on the Tinley Park Mental Health Center and expressed his concerns with the security at the property.

Nancy O’Connor noted that the situation between the Tinley Park Mental Health Center and the Illinois Environmental Protection Agency is in process. She also asked what the differences between the current and the proposed Ethics ordinances are. Mr. Connelly explained the changes.

A resident commented that she would like a referendum regarding the cannabis decision.

President Pro-Tem Glotz asked if there was any one else wished to address the Board. There were none.

Motion was made by Trustee Brennan, seconded by Trustee Berg, to adjourn the Committee of the Whole. Vote by voice call. President Pro-Tem Glotz declared the motion carried and adjourned the meeting at 8:45 p.m.



Interoffice Memo

Date: December 17, 2019

To: Mayor & Board of Trustees
Dave Niemeyer, Village Manager

From: Kimberly Clarke, Director of Community Development

Subject: Verizon Wireless Master Pole Attachment Agreement for Small Cell Co-Location on Village-Owned Utility Poles

BACKGROUND

S.B. 1451, known as Small Wireless Facilities Deployment Act (the Act) was approved by the Illinois General Assembly and signed by Governor Rauner into law in April 2018. This law established state-wide regulations for collocation of small cell antennas located within the public right-of-way and on private commercial and industrial properties. The Village subsequently passed a Small Cell Regulation Ordinance in July 2018 and small cell design guidelines in June 2019 to retain as much control as possible over the siting and design of small cell antennas in public right-of-ways.

The proposed Master Pole Agreement is based off the Illinois Municipal League's (IML) Model Agreement, with only minor changes to keep consistent code references and terminology. The overarching agreement with Verizon will permit the location of small cell wireless equipment on the Village's municipally-owned utility poles. Separate supplements for each pole co-location will be approved administratively by the Village Manager. Each supplement is approved for a duration of five years. This agreement sets the highest permit fees and annual rent as permitted by the Act. Additionally, bonds are required for each pole to ensure removal of equipment and restoration of the site if the small cell use is discontinued or an early termination agreement is initiated. The Master Pole/Attachment Agreement is required to avoid having to complete new agreements for each pole, which can be time-consuming and has little advantage due to the Act's set requirements. In the event the Act is repealed or changed (such as an increase to maximum rent), the Village will have the option to change the small cell ordinance and attachment agreements.

A similar agreement was approved with AT&T Wireless in May 2019. The agreements are almost identical with the exception of some changes to the insurance section to be more in-line with industry standards. All changes were reviewed and approved by the Village Attorney. It is expected that there will be identical agreements for the remaining carriers in the near future.

DISCUSSION

The attached Resolution and Master Pole Attachment Agreement with Verizon Wireless were drafted and presented based on the recommendation of the Illinois Municipal League, Village

Attorney, and Village Planning staff. This item was presented and discussed at the Committee of the Whole on December 17, 2019

RECOMMENDATION

Adopt the attached Resolution and Master Pole Attachment Agreement with Verizon Wireless as presented.

Attachments:

1. Resolution
2. Verizon Master Pole Agreement

THE VILLAGE OF TINLEY PARK
Cook County, Illinois
Will County, Illinois

RESOLUTION
NO. 2019-R-120

**A RESOLUTION APPROVING A MASTER POLE ATTACHMENT
AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND
CHICAGO SMSA LIMITED PARTNERSHIP**

JACOB C. VANDENBERG, PRESIDENT
KRISTIN A. THIRION, VILLAGE CLERK

CYNTHIA A. BERG
WILLIAM P. BRADY
WILLIAM A. BRENNAN
DIANE M. GALANTE
MICHAEL W. GLOTZ
MICHAEL G. MUELLER
Board of Trustees

Published in pamphlet form by authority of the President and Board of Trustees of the Village of Tinley Park
Peterson, Johnson, & Murray Chicago, LLC, Village Attorneys
200 W. Adams, Suite 2125 Chicago, IL 60606

VILLAGE OF TINLEY PARK
Cook County, Illinois
Will County, Illinois

RESOLUTION NO. 2019-R-120

**A RESOLUTION APPROVING A MASTER POLE ATTACHMENT
AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND
CHICAGO SMSA LIMITED PARTNERSHIP**

WHEREAS, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Tinley Park, Cook and Will Counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, the Village of Tinley Park (“Village”) desires to enter into a Master Pole Attachment Agreement (“Agreement”) with Chicago SMSA Limited Partnership *d/b/a* Verizon Wireless (“Chicago SMSA”), attached hereto as Exhibit 1, pertaining to the installation, maintenance, and operation of small cell wireless facilities in the Village; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interest of the Village of Tinley Park and its residents to approve said Agreement with Chicago SMSA; and

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS, STATE AS FOLLOWS:

SECTION 1: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION 2: The President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interest of the Village and its residents that the aforesaid Agreement be entered into with Chicago SMSA, and that the Village President is hereby authorized to execute said Agreement on behalf of the Village, with said Agreement to be substantially in the form attached hereto and made a part hereof as Exhibit 1, subject to review and revision as to form by the Village Attorney.

SECTION 3: Any policy, resolution, or ordinance of the Village that conflicts with the provisions of this Resolution shall be and is hereby repealed to the extent of such conflict.

SECTION 4: That the Village Clerk is hereby ordered and directed to publish this Resolution in pamphlet form, and this Resolution shall be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED THIS 17th day of December, 2019.

AYES:

NAYS:

ABSENT:

APPROVED THIS 17th day of December, 2019.

VILLAGE PRESIDENT

ATTEST:

VILLAGE CLERK

STATE OF ILLINOIS)
COUNTY OF COOK) SS
COUNTY OF WILL)

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2019-R-120, “A RESOLUTION APPROVING A MASTER POLE ATTACHMENT AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND CHICAGO SMSA LIMITED PARTNERSHIP,” which was adopted by the President and Board of Trustees of the Village of Tinley Park on December 17, 2019

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 17th day of December, 2019.

KRISTIN A. THIRION, VILLAGE CLERK

MASTER POLE ATTACHMENT AGREEMENT

This Master Pole Attachment Agreement ("Agreement") made this ____ day of _____, 20____, between the VILLAGE OF TINLEY PARK, with its principal offices located at 16250 S. Oak Park Avenue, Tinley Park, IL 60477, hereinafter designated LICENSOR and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ 07920, hereinafter designated LICENSEE. LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

WHEREAS, LICENSOR is the owner, of certain utility poles, wireless support structures, and/or real property, which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission (FCC) to LICENSEE; and

WHEREAS, LICENSEE desires to install, maintain and operate small wireless facilities in and/or upon certain of LICENSOR's utility poles, wireless support structures and/or real property; and

WHEREAS, LICENSOR and LICENSEE acknowledge that any term used in this Agreement that is defined in Chapter 106 "Small Wireless Facilities" of Title IX "General Regulations" of the Tinley Park Municipal Code (as now or hereafter amended "Chapter 106") shall have the meaning provided therein; and

WHEREAS, LICENSOR and LICENSEE acknowledge that the terms of this Agreement are nondiscriminatory, competitively neutral and commercially reasonable; and

WHEREAS, LICENSOR and LICENSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LICENSOR may wish to permit LICENSEE to install, maintain and operate small wireless facilities as hereinafter set forth; and

WHEREAS, the LICENSOR and LICENSEE intend to promote the expansion of communications services in a manner consistent with the Small Wireless Facilities Deployment Act ("Act"), the Illinois Cable and Video Competition Act, the Illinois Telephone Company Act, the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1, *et. seq.* and Federal Communication Commission Regulations; and

WHEREAS, LICENSOR and LICENSEE acknowledge that they will enter into a License Supplement ("Supplement"), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to license; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of LICENSEE in different geographic areas and as a result, each Supplement may be signed by LICENSEE affiliated entities as further described herein, as appropriate based upon the entity holding the FCC license in the subject geographic location.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

- 1) **PREMISES**. Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LICENSOR agrees to license to LICENSEE that certain space on or upon LICENSOR's utility poles, and/or wireless support structures as more fully described in each Supplement to be executed by the Parties hereinafter referred to as the "Premises", for the installation, operation, maintenance, repair and modification of small wireless facilities; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property (as defined below) and to and from the Premises for the purpose of installation, operation, maintenance, repair and modification of LICENSEE's small wireless facilities. The LICENSOR's utility poles, wireless support structures and other poles and towers are hereinafter referred to as "Pole" and the entirety of the LICENSOR's property is hereinafter referred to as "Property". In the event there are not sufficient electric and telephone, cable or fiber utility sources located at the Premises or on the Property, LICENSOR agrees to grant LICENSEE the right to install such utilities on, over and/or under the Property and to the Premises as necessary for LICENSEE to operate its communications facility, but only from the duly authorized provider of such utilities, provided the location of such utilities shall be designated by LICENSOR.
- 2) **PERMIT APPLICATION**. For each small wireless facility, LICENSEE shall submit an application to LICENSOR for a permit that includes:
 - a) Site specific structural integrity and, for LICENSOR'S utility pole or wireless support structure, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - b) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
 - c) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
 - e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;
 - f) Certification that the collocation complies with LICENSOR's Small Wireless Facilities Ordinance requirements, to the best of the applicant's knowledge; and
 - g) The application fee due.
- 3) **APPLICATION FEES**. Application fees are subject to the following requirements:

- a) LICENSEE shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- b) LICENSEE shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- c) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section must be accompanied by the required application fee.
- d) LICENSOR shall not require an application, approval, or permit, or require any fees or other charges, from LICENSEE, for:
 - i) routine maintenance; or
 - ii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if LICENSEE notifies LICENSOR at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of this Agreement; or
 - iii) the installation, placement, maintenance, operation, or replacement of small wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes, provided this provision does not authorize such facilities to be suspended from municipal electric lines, if any.

LICENSEE shall secure a permit from LICENSOR to work within rights-of-way for activities that affect traffic patterns or require lane closures.

4) REQUIREMENTS.

- a) LICENSEE's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications. LICENSEE shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. If a small wireless facility causes such interference, and LICENSEE has been given written notice of the interference by the public safety agency, LICENSEE, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The LICENSOR may terminate a permit for a small wireless facility based on such interference if LICENSEE is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

- b) LICENSEE shall not install devices on the existing utility pole or wireless support structure that extend beyond ten (10) feet of the pole's existing height.
- c) LICENSEE shall install pole mounted equipment at a minimum of eight (8) feet from the ground.
- d) LICENSEE shall be limited to one (1) cabinet or other ground mounted device for ground mounted installations.
- e) LICENSEE shall paint or otherwise camouflage antennas, mounting hardware, and other devices to match or complement the structure upon which they are being mounted.
- f) LICENSEE shall install landscaping at the base of poles with respect to any ground equipment installed by LICENSEE on which devices are being installed as required by the LICENSOR's Small Wireless Facilities Ordinance, Zoning Ordinance or Landscape Code, to the extent applicable.
- g) LICENSEE shall, to the extent applicable, comply with all the terms and conditions of Chapter 103 "Construction of Utility Facilities in Public Rights-of-Way" of Title IX "General Regulations" of the Tinley Park Municipal Code (as now or hereafter amended "Chapter 103") and Chapter 106 in regards to construction of utility facilities in public rights-of-way.
- h) LICENSEE shall comply with applicable requirements that are imposed by a contract between the LICENSOR and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- i) LICENSEE shall comply with applicable spacing requirements in Chapter 106 and the Zoning Ordinance concerning the location of ground-mounted equipment located in the right-of-way.
- j) LICENSEE shall, to the extent applicable, comply with Chapter 103 and Chapter 106 and the Zoning Ordinance concerning undergrounding requirements or determinations from the municipal officer or employee in charge of municipal utilities, if any.
- k) LICENSEE shall, to the extent applicable, comply with Chapter 103 and Chapter 106 and the Zoning Ordinance for construction and public safety in the rights-of-way, including, but not limited to, wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations; and shall comply with reasonable and nondiscriminatory requirements that are consistent with PA 100-0585 and adopted by LICENSOR regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities.
- l) LICENSEE shall not collocate small wireless facilities within the communication worker safety zone of the pole or the electric supply zone of the pole on LICENSOR utility poles that are part of an electric distribution or transmission system. However, the antenna and support equipment of the small wireless facility may be located in the communications space on the LICENSOR utility pole and on the top of the pole, if not otherwise unavailable, if LICENSEE complies with Chapters 103 and Chapter 106 and the Zoning Ordinance for work involving the top of the pole. For purposes of this subparagraph, the

terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- m) LICENSEE shall comply with all applicable Village ordinances or codes that concern public safety.
- n) LICENSEE shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Agreement. LICENSEE shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- o) LICENSEE shall comply with Chapter 103 and the applicable Zoning Ordinance requirements for decorative utility poles, or stealth, concealment, and aesthetic requirements that are identified by LICENSOR in the Zoning Ordinance, Legacy Plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark, in a historic district or in LICENSOR's Legacy District.
- p) LICENSEE shall comply with the applicable design or concealment measures in a historic district or historic landmark set forth in Chapter 103 and the Zoning Ordinance. With respect to an application for the collocation of a small wireless facility on a decorative pole, LICENSOR may propose that the small wireless facility be collocated on an existing pole or existing wireless support structure within 100 feet of the proposed collocation, which LICENSEE shall accept so long as the alternate location and structure does not impose technical limits or additional material costs as determined by LICENSEE. In the absence of an agreement to collocate on an alternate location, LICENSEE will conceal or enclose its small wireless facility and associated equipment as much as is technically feasible on LICENSOR's decorative pole.

Any such design or concealment measures, including restrictions on a specific category of poles, may not have the effect of prohibiting any LICENSEE's technology. Such design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility. This paragraph may not be construed to limit LICENSOR's enforcement of historic preservation in conformance with the requirements adopted pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act of 1966, 54 U.S.C. Section 300101 *et seq.* and the regulations adopted to implement those laws.

5) APPLICATION PROCESS. LICENSOR shall process applications as follows:

- a) An application to collocate a small wireless facility on an existing utility pole, replacement of an existing utility pole or wireless support structure owned or controlled by LICENSOR shall be processed by LICENSOR and deemed approved if LICENSOR fails to approve or deny the application within ninety (90) days. However, if LICENSEE intends to proceed with the permitted activity on a deemed approved basis, LICENSEE must notify LICENSOR in writing of its intention to invoke the deemed approved remedy no sooner than seventy five (75) days after the submission of a completed application. The permit shall be deemed approved on the latter of the 90th day after submission of the complete

application or the 10th day after the receipt of the deemed approved notice by LICENSOR. The receipt of the deemed approved notice shall not preclude LICENSOR's denial of the permit request within the time limits as provided under the Act.

- b) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed and deemed approved if LICENSOR fails to approve or deny the application within one hundred twenty (120) days. However, if LICENSEE applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant must notify LICENSOR in writing of its intention to invoke the deemed approved remedy no sooner than one hundred five (105) days after the submission of a completed application. The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by LICENSOR. The receipt of the deemed approved notice shall not preclude LICENSOR's denial of the permit request within the time limits as provided under the Act.
- c) LICENSOR shall approve an application unless the application does not meet the applicable requirements of Chapter 106.
- d) If LICENSOR determines that applicable codes, local code provisions or regulations that concern public safety, or the requirements of Chapter 106, require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned on the replacement of the utility pole or wireless support structure at the cost of LICENSEE. LICENSOR must document the basis for a denial, including the specific code provisions or application conditions on which the denial was based, and send the documentation to LICENSEE on or before the day LICENSOR denies an application. LICENSEE may cure the deficiencies identified by LICENSOR and resubmit the revised application once within thirty (30) days after notice of denial is sent to the applicant without paying an additional application fee. LICENSOR shall approve or deny the revised application within thirty (30) days after LICENSEE resubmits the application or it is deemed approved. However, LICENSEE must notify LICENSOR in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application. Any subsequent review shall be limited to the deficiencies cited in the denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.
- e) COMPLETENESS OF APPLICATION. Within thirty (30) days after receiving an application, the LICENSOR shall determine whether the application is complete and notify the applicant. If an application is incomplete, the LICENSOR shall specifically identify the missing information. An application shall be deemed complete if the LICENSOR fails to provide notification to the applicant within thirty (30) days after all documents, information and fees specifically enumerated in the LICENSOR's permit application form are submitted by the applicant to the LICENSOR. Processing deadlines

are tolled from the time the LICENSOR sends the notice of incompleteness to the time the applicant provides the missing information.

- f) TOLLING. The time period for applications may be further tolled by the express agreement in writing by both LICENSOR and LICENSEE; or a local, State or federal disaster declaration or similar emergency that causes the delay.
 - g) CONSOLIDATED APPLICATIONS. A LICENSEE seeking to collocate small wireless facilities within the jurisdiction of LICENSOR shall be allowed, at LICENSEE's discretion, to file a consolidated application and receive a single permit for the collocation of up to twenty five (25) small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. If an application includes multiple small wireless facilities, LICENSOR may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. LICENSOR may issue separate permits for each collocation that is approved in a consolidated application.
- 6) COLLOCATION COMPLETION DEADLINE. Collocation for which a permit is granted shall be completed within one hundred eighty (180) days after issuance of the permit, unless LICENSOR and LICENSEE agree to extend this period or a delay is caused by make-ready work for a LICENSOR utility pole or by the lack of commercial power or backhaul availability at the site, provided LICENSEE has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty (360) days after issuance of the permit. Otherwise, the permit shall be void unless LICENSOR grants an extension in writing to the LICENSEE.
- 7) DURATION OF PERMITS AND SUPPLEMENTS. The duration of a permit and the initial Supplement shall be for a period of five (5) years, and the permit and Supplement shall be renewed for equivalent durations unless LICENSOR makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable codes or local code provisions or regulations in Chapter 106. If P.A. 100-0585 is repealed as provided in Section 90 of the Act, renewals of permits shall be subject to the LICENSOR's code provisions or regulations in effect at the time of renewal.
- 8) EXTENSIONS. Each Supplement may be extended for additional five (5) year terms unless LICENSEE terminates it at the end of the then current term by giving LICENSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term. The initial term and all extensions under a Supplement shall be collectively referred to herein as the "Term". Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination.
- 9) RENTAL. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the initial term of each Supplement shall be for five (5) years and shall commence on the first day of the month following the day that LICENSEE commences installation of the equipment on the Premises (the "Commencement

Date”) at which time rental payments shall commence and be due at a total annual rental as set forth in the Supplement, to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to the LICENSOR in the Supplement (unless LICENSOR otherwise designates another payee and provides notice to LICENSEE). LICENSOR and LICENSEE acknowledge and agree that the initial rental payment for each Supplement shall not actually be sent by LICENSEE until thirty (30) days after the Commencement Date. LICENSOR and LICENSEE agree that they shall acknowledge in writing the Commencement Date of each Supplement. Rental for the use of any poles pursuant to this Agreement, shall be an annual fee of \$200.00 per each wireless facility which LICENSEE attaches to LICENSOR’s pole. Thereafter, rent will be due at each annual anniversary of the “Commencement Date” of the applicable Supplement. Upon agreement of the Parties, LICENSEE may pay rent by electronic funds transfer and in such event, LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

- 10) ABANDONMENT. A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the LICENSEE must remove the small wireless facility within ninety (90) days after receipt of written notice from LICENSOR notifying LICENSEE of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by LICENSOR to the LICENSEE at the last known address of LICENSEE. If the small wireless facility is not removed within ninety (90) days of such notice, LICENSOR may remove or cause the removal of such facility and charge said costs to the LICENSEE.

LICENSEE shall provide written notice to LICENSOR of any sale or transfer of small wireless facilities not less than thirty (30) days prior to such transfer and said notice shall include the name and contact information of the new wireless provider.

- 11) CONDITION OF PREMISES. Where the Premises includes one or more Poles, LICENSOR covenants that it will keep the Poles in good repair as required by all federal, state, county and local laws. If the LICENSOR fails to make such repairs including maintenance within sixty (60) days, of any notification to LICENSOR, the LICENSEE shall have the right to cease annual rental for the affected poles, but only if the poles are no longer capable of being used for the purpose originally contemplated in this Agreement or otherwise do not comply with existing law. If LICENSEE terminates, LICENSEE shall remove its small wireless facility. Termination of this Agreement shall be the LICENSEE’s sole remedy.

- 12) MAKE READY TERMS. LICENSOR shall not require more make-ready work than required to meet applicable codes or industry standards. Make-ready work may include work needed to accommodate additional public safety communications needs that are identified in a documented and approved plan for the deployment of public safety equipment as specified and included in an existing or preliminary LICENSOR or public service agency plan. Fees for make-ready work, including any LICENSOR utility pole attachment, shall not exceed actual costs or the amount charged to communications service providers for similar work and shall not include any consultants’ fees or expenses for LICENSOR utility poles that do not support aerial facilities used to provide communications services or electric service. Make-ready work, including any pole replacement, shall be completed within sixty (60) days of written

acceptance of the good-faith estimate by the LICENSOR at the LICENSEE's sole cost and expense. Unless otherwise agreed by the parties, any make-ready work, including pole replacements, shall be performed by the LICENSEE or its qualified contractor.

- 13) AERIAL FACILITIES. For LICENSOR utility poles that support aerial facilities used to provide communications services or electric services, LICENSEE shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations. LICENSOR shall follow a substantially similar process for such make-ready work except to the extent that the timing requirements are otherwise addressed in Chapter 106. The good-faith estimate of the person owning or controlling LICENSOR's utility pole for any make-ready work necessary to enable the pole to support the requested collocation shall include LICENSOR utility pole replacement, if necessary. Make-ready work for utility poles that support aerial facilities used to provide communications services or electric services may include reasonable consultants' fees and expenses.
- 14) NO AERIAL FACILITIES. For LICENSOR utility poles that do not support aerial facilities used to provide communications services or electric services, LICENSOR shall provide a good-faith estimate for any make-ready work necessary to enable the LICENSOR utility pole to support the requested collocation, including pole replacement, if necessary, within ninety (90) days after receipt of a complete application. Make-ready work, including any LICENSOR utility pole replacement, shall be completed within sixty (60) days of written acceptance of the good-faith estimate by LICENSEE at LICENSEE's sole cost and expense. Alternatively, if LICENSOR determines that applicable codes or public safety regulations require the LICENSOR's utility pole to be replaced to support the requested collocation, LICENSOR may require LICENSEE to replace LICENSOR's utility pole at LICENSEE's sole cost and expense.
- 15) GENERAL RESTRICTIONS. In the event LICENSOR, in its reasonable discretion deems it necessary to remove, relocate or replace a Pole, LICENSOR shall notify LICENSEE at least one hundred eighty (180) days prior of the need to remove or relocate its small wireless facility. In such event, LICENSOR shall provide options for alternative locations for LICENSEE relocation of equipment which shall be in a mutually agreeable location ("Alternative Premises"). LICENSEE shall be solely responsible for all costs related to the relocation of its small wireless facility to the Alternative Premises. In the event that a suitable Alternative Premises cannot be identified, LICENSEE may terminate the applicable Supplement. In the event of an emergency, which for purposes of this Agreement shall be considered any imminent threat to health, safety and welfare of the public, LICENSOR must provide as much notice as reasonably practical under the circumstances. LICENSEE may terminate this Agreement by giving written notice to the other party specifying the date of termination, such notice to be given not less than one hundred eighty (180) days prior to the date specified therein.
- 16) ELECTRICAL. LICENSEE shall be permitted to connect its equipment to necessary electrical and telephone service, at LICENSEE's expense. LICENSEE shall attempt to coordinate with utility companies to provide separate service to LICENSEE's equipment for LICENSEE use. In the event that LICENSEE can obtain separate electrical service with a separate meter measuring usage, the LICENSEE shall pay the utility directly for its power

consumption, if billed directly by the utility. In the event that separate electrical service is not possible or practical under the circumstances, LICENSEE may use existing service, at LICENSEE's expense, upon the reasonable approval of LICENSOR. In the event that LICENSEE uses existing utility service at an individual Premises, the Parties agree to either: (i) attempt to have a sub-meter installed, at LICENSEE's expense, which shall monitor LICENSEE's utility usage (with a reading and subsequent bill for usage delivered to LICENSEE by either the applicable utility company or LICENSOR); or (ii) provide for an additional fee in the applicable Supplement which shall cover LICENSEE's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Supplement.

- 17) TEMPORARY POWER. LICENSEE shall be permitted at any time during the Term of each Supplement, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LICENSOR. LICENSEE shall be permitted to connect the temporary power source to its equipment on the Premises in areas and manner approved by LICENSOR.
- 18) USE: GOVERNMENTAL APPROVALS. LICENSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating small wireless facilities and uses incidental thereto. LICENSEE shall have the right to replace, repair and modify equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, in conformance with the original Supplement. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon its obtaining after the execution date of each Supplement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis which will permit LICENSEE use of the Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) LICENSEE determines that such Governmental Approvals may not be obtained in a timely manner, LICENSEE shall have the right to terminate the applicable Supplement. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the notice provisions set forth in Paragraph 23 and shall be effective upon the mailing of such notice by LICENSEE, or upon such later date as designated by LICENSEE. All rentals paid to said termination date shall be retained by LICENSOR. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, the LICENSEE shall have no further obligations for the payment of rent to LICENSOR for the terminated Supplement. Notwithstanding anything to the contrary in this Paragraph, LICENSEE shall continue to be liable for all rental payments to the LICENSOR until all equipment is removed from the Property.
- 19) INSURANCE. LICENSEE shall carry, at LICENSEE's own cost and expense, the following insurance: (i) property insurance for its property's replacement cost against all risks; (ii)

workers' compensation insurance, as required by law; or (iii) commercial general liability insurance with respect to its activities on LICENSOR improvements or rights-of-way to afford protection limits consistent with the requirements of this Section. LICENSEE shall include LICENSOR as an additional insured as their interest may appear on the required commercial general liability policy and provide a certificate of insurance as and blanket additional insured endorsement as documentation of inclusion of LICENSOR in such commercial general liability policy.

LICENSEE may self-insure all or a portion of the insurance coverage and limit requirements required by LICENSOR. If LICENSEE self-insures it is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this Section. If LICENSEE elects to self-insure it shall provide to LICENSOR evidence sufficient to demonstrate LICENSEE's or its affiliated parent's financial ability to self-insure the insurance coverage and limits required by LICENSOR.

- (A) Required coverages and limits. Licensee shall secure and maintain the following liability insurance policies insuring the utility as named insured and including naming the village, and its elected and appointed officers, officials, and employees as additional insureds as their interest may appear under this Agreement on the policies listed in division (A)(1) and (2) below:
 - (1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X," "C," and "U" coverages) and products-completed operations coverage with limits of:
 - (a) Five million dollars per occurrence for bodily injury (including death) and for property damage; and
 - (b) Five million dollars general aggregate;
 - (2) Commercial Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 each accident for bodily injury and property damage;
 - (3) Worker's compensation with statutory limits; and
 - (4) Employer's liability insurance with limits of \$ 1,000,000 each accident, \$1,000,000 disease-each employee, \$1,000,000 disease policy limit.
- (B) Copies required. Licensee shall provide certificates of insurance evidencing the policies required by this section.
- (C) Upon receipt of notice from its insurer(s), Licensee shall provide the Licensor with thirty (30) days' prior written notice of cancellation of any coverage required herein.
- (D) Effect of insurance and self-insurance on Licensee's liability. The legal liability of the Licensee to the Licensor and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

20) **INDEMNIFICATION.** LICENSEE shall indemnify and hold LICENSOR harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of LICENSOR's improvements or right-of-way associated with such improvements by LICENSEE or its employees, agents, or contractors arising out of the rights and privileges granted under this Agreement and PA 100-0585. LICENSEE has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of LICENSOR or its employees or agents. LICENSEE hereby further waives any claims that LICENSEE may have against the LICENSOR with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

- 21) REMOVAL AT END OF TERM. LICENSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of a Supplement remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage not caused by LICENSEE excepted. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LICENSEE shall remain the personal property of LICENSEE and LICENSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LICENSEE to remain on the Premises after termination of the Supplement, LICENSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed.
- 22) RIGHTS UPON SALE. Should LICENSOR, at any time during the Term of any Supplement decide to sell or transfer all or any part of the Property such sale or grant of an easement or interest therein shall be under and subject to the Supplement and any such purchaser or transferee shall recognize LICENSEE's rights hereunder and under the terms of the Supplement.
- 23) NOTICES. All notices hereunder must be in writing and shall be deemed validly 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, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR:
Community Development Director
Village of Tinley Park
16250 S. Oak Park Avenue
Tinley Park, IL 60477

Copy to:
Patrick G Connelly
Peterson, Johnson & Murray Chicago, LLC
200 West Adams St., Suite 2125
Chicago, IL 60606

LICENSEE:

Chicago SMSA Limited Partnership d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921
Attention Network - Real Estate

with a copy sent to:

Chicago SMSA Limited Partnership d/b/a Verizon Wireless

1515 E Woodfield Rd
10th Floor
Schaumburg, IL 60173
Attn: Network Legal

Either Party may change the addressee and/or location for the giving of notice to it by providing a thirty (30) days' prior written notice to the other Party.

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

- 24) CASUALTY. In the event of damage by fire or other casualty to the Pole or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Pole or Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's use of the Premises is impaired.
- 25) DEFAULT. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period, not to exceed ninety (90) days, as may be required beyond the thirty (30) days if the breaching Party commences the cure within the 30-day period and thereafter continuously and diligently pursues to cure to completion. The non-breaching Party may maintain any action or affect any remedies for default against the breaching Party subsequent to the 30-day cure period, as potentially extended to ninety (90) days based on circumstances.
- 26) REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting, other than by the specific terms of this Agreement, the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the applicable Supplement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state of Illinois. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

- 27) APPLICABLE LAWS. During the Term, LICENSOR shall maintain the Property and the Pole in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, (collectively "Laws"). LICENSEE shall, in respect to the condition of the Premises and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE in the Premises. It shall be LICENSOR's obligation to comply with all Laws relating to the Pole in general, without regard to specific use (including, without limitation, modifications required to enable LICENSEE to obtain all necessary building permits).
- 28) RIGHTS UNDER EXISTING LAWS; CHANGE OF LAW. This Agreement is not intended to in any way limit or waive either Party's present or future rights under applicable state and federal law. If any law sets forth a term or provision that is inconsistent with or different than this Agreement, then the Parties agree to promptly amend the Agreement to effect the term or provision set forth under the law.
- 29) BOND. LICENSEE shall deposit with LICENSOR on one occasion prior to the commencement of the first Supplement a bond in a form reasonably acceptable to LICENSOR in the amount of \$10,000 per small wireless facility to guarantee the safe and efficient removal of any equipment from any Premises subject to this Agreement, which equipment remains more than ninety (90) days after rental payment has ceased and LICENSEE has failed to remove the equipment. The funds may also be used to restore the premises to original condition, if LICENSEE fails to do so.
- 30) MISCELLANEOUS. This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such Party shall have the right to enforce such rights at any time. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state of Illinois.
- 31) EXECUTION IN COUNTERPARTS. This Agreement and any Supplements may be executed in multiple counterparts, including by counterpart facsimiles or scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.
- 32) AUTHORIZATION. LICENSEE certifies and warrants that it has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

Village of Tinley Park, an Illinois Municipal Corporation

BY:

Name: _____

Title: _____

Date: _____

LICENSEE:

Chicago SMSA Limited Partnership

BY:

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

LICENSE SUPPLEMENT

This License Supplement ("Supplement"), is made this ____ day of _____, _____, between **the Village of Tinley Park**, whose principal place of business is 16250 S. Oak Park Avenue, Tinley Park, IL 60477 ("LICENSOR"), and **Chicago SMSA Limited Partnership d/b/a Verizon Wireless**, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ **07920**, whose principal place of business is 1025 Lenox Park Blvd. NE 3rd Floor Atlanta, Georgia 30319 ("LICENSEE").

1. **Master License Agreement.** This Supplement is a Supplement as referenced in that certain Master License Agreement between the Village of Tinley Park and Chicago SMSA Limited Partnership d/b/a Verizon Wireless,, dated _____, 20____, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Premises.** The Property owned by LICENSOR is located at _____ . The Premises licensed by the LICENSOR to the LICENSEE hereunder is described on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date and the Term of this Supplement shall be as set forth in Paragraph 7 of the Agreement.
4. **Consideration.** Rent under this Supplement shall be \$200.00 per year, payable to LICENSOR at _____. Thereafter, rent will be due at each annual anniversary of the "Commencement Date" of this Supplement. LICENSEE shall obtain electrical service and provide for a separate meter and billing from the applicable utility provider.
5. **Site Specific Terms.** (Include any site-specific terms)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

LICENSOR

Village of Tinley Park, an Illinois Municipal Corporation

BY:

Name: _____

Title: _____

Date: _____

LICENSEE

Chicago SMSA Limited Partnership

BY:

Name: _____

Title: _____

Date: _____

EXHIBIT 1 OF LICENSE SUPPLEMENT

Premises

(see attached site plans)



Interoffice Memo

Date: December 17, 2019

To: Mayor & Board of Trustees
Dave Niemeyer, Village Manager

From: Kimberly Clarke, Director of Community Development

Subject: 16200 S. Harlem Avenue Class 7a

BACKGROUND

Rick White (Applicant) of Park Ridge Midwest Realty Group, LLC. (Bandana's) plans to invest \$400,000 – \$450,000 in the vacant 4,245 SF commercial space located at 16200 S. Harlem Avenue in Tinley Park. This location has been 100% vacant and unused since April 2015 and requires significant improvements.



On February 5, 2019, the Village Board approved Ordinance 2019-O-008 designating the area known as 159th and Harlem Avenue as blighted. This designation is the first requirement to qualify for Cook County's Class 7 Assessment Program. The blighted designation allows for current / future developers and businesses the ability to immediately access Cook County Class 7 incentives with Village approval to attract investment in high vacancy and underdeveloped areas. The subject property is located within the designated blighted area outlined within the ordinance and is therefore eligible to apply for Class 7 incentives.

The Applicant has retained the counsel of Sarnoff and Baccash, a property tax law firm located in Chicago, Illinois, to assist with preparing the Class 7a application for Village and Cook County submittal.

DISCUSSION

This case was unanimously approved by the Economic Commercial Commission at their December 9, 2019 meeting and discussed at the Committee of the Whole meeting on December 17, 2019.

RECOMMENDATION

Adopt the attached Resolution supporting and consenting to the filing of a class 7A Application and Finding the Class 7A Necessary for Development to occur at 16200 S. Harlem Avenue

Attachments:

1. Resolution
2. Request Letter & Application

THE VILLAGE OF TINLEY PARK

Cook County, Illinois

Will County, Illinois

**RESOLUTION
NO. 2019-R-125**

**A RESOLUTION SUPPORTING AND CONSENTING TO THE FILING OF A CLASS
7A APPLICATION AND FINDING THE CLASS 7A NECESSARY FOR
DEVELOPMENT TO OCCUR AT 16200 S. HARLEM AVENUE**

**JACOB C. VANDENBERG, PRESIDENT
KRISTIN A. THIRION, VILLAGE CLERK**

**CYNTHIA A. BERG
WILLIAM P. BRADY
WILLIAM A. BRENNAN
DIANE M. GALANTE
MICHAEL W. GLOTZ
MICHAEL G. MUELLER
Board of Trustees**

Published in pamphlet form by authority of the President and Board of Trustees of the Village of Tinley Park
Peterson, Johnson, & Murray Chicago, LLC, Village Attorneys
200 W. Adams, Suite 2125 Chicago, IL 60606

VILLAGE OF TINLEY PARK
Cook County, Illinois
Will County, Illinois

RESOLUTION NO. 2019-R-125

**A RESOLUTION SUPPORTING AND CONSENTING TO THE FILING OF A CLASS
7A APPLICATION AND FINDING THE CLASS 7A NECESSARY FOR
DEVELOPMENT TO OCCUR AT 16200 S. HARLEM AVENUE**

WHEREAS, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Tinley Park, Cook and Will Counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, the Village of Tinley Park (“Village”) desires to attract new industry, stimulate the expansion and retention of existing industry, and increase employment opportunities in the Village; and

WHEREAS, Cook County has instituted a program to encourage commercial development known as the Cook County Real Property Classification Ordinance (“Tax Incentive Ordinance”); and

WHEREAS, said Tax Incentive Ordinance provides a Class 7a incentive that is designed to encourage commercial development throughout Cook County by offering real estate tax incentives for the development of new commercial facilities, the rehabilitation of existing commercial structures, and the commercial reutilization of abandoned buildings; and

WHEREAS, Rick White on behalf of Park Ridge Midwest Realty Group, LLC. (“Bandana’s”), desires to redevelop certain real property located at 16200 S. Harlem Avenue, Tinley Park, Illinois (“Subject Property”), legally described in the attached Exhibit 1, PIN: 27-24-202-022-0000, in reliance on the Class 7a incentives and to plans to relocate its headquarters to said Subject Property, which is presently a vacant structure; and

WHEREAS, Bandana’s would find it difficult to relocate and construct at the Subject Property given the current tax liability on the Subject Property but for said Class 7a incentive, which provides a reduced assessment of ten percent (10%) of fair market value of the Property for the first ten years, fifteen percent (15%) for the eleventh year, and twenty percent (20%) for the twelfth year; and

WHEREAS, said Subject Property does not have a Class 7a incentive applied to the Subject Property and Bandana's seeks approval from the Village to consent and support said Class 7a incentive to be applied to the Subject Property; and

WHEREAS, the Village has determined that the Subject Property meets the requirements necessary for approving the request for certain tax incentives, and by allowing said reclassification will further promote the economic viability of the Subject Property which is aligned with the Village's desire to attract new industry, stimulate the expansion and retention of existing industry, and increase employment opportunities in the Village; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interest of the Village of Tinley Park and its residents to approve the request submitted by Bandana's and consent and support the Class 7a reclassification of the Subject Property; and

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS, STATE AS FOLLOWS:

SECTION 1: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION 2: That the President and Board of Trustees of the Village of Tinley Park hereby approves the request submitted by Bandana's and supports and consents to the Class 7a reclassification and has determined that the commercial use of the Subject Property by Bandana's for its new restaurant location at the Subject Property is both necessary and beneficial to the Village.

SECTION 3: Any policy, resolution, or ordinance of the Village that conflicts with the provisions of this Resolution shall be and is hereby repealed to the extent of such conflict.

SECTION 4: That the Village Clerk is hereby ordered and directed to publish this Resolution in pamphlet form, and this Resolution shall be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED THIS 17th day of December, 2019.

AYES:

NAYS:

ABSENT:

APPROVED THIS 17th day of December, 2019.

VILLAGE PRESIDENT

ATTEST:

VILLAGE CLERK

STATE OF ILLINOIS)
COUNTY OF COOK) SS
COUNTY OF WILL)

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2019-R-125, “A RESOLUTION SUPPORTING AND CONSENTING TO THE FILING OF A CLASS 7A APPLICATION AND FINDING THE CLASS 7A NECESSARY FOR DEVELOPMENT TO OCCUR AT 16200 S. HARLEM AVENUE,” which was adopted by the President and Board of Trustees of the Village of Tinley Park on December 17, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 17th day of December, 2019.

KRISTIN A. THIRION, VILLAGE CLERK

EXHIBIT 1
LEGAL DESCRIPTION

Legal Description, Site and Building Square Footage

The total land area of the subject parcel located at 16200 S. Harlem Ave. in Tinley Park, Illinois (PINs: 27-24-202-022-0000) is approximately 48,351 square feet, and the total building area is approximately 4,245 square feet.

PARCEL I:

LOT 5 IN SUPER-K SUBDIVISION, BEING A RESUBDIVISION OF LOTS 4 TO 11 IN PARK PLACE, A SUBDIVISION OF PART OF THE NORTHEAST QUARTER (1/4) OF THE SOUTHEAST QUARTER (1/4) AND PART OF THE SOUTHEAST QUARTER (1/4) OF THE NORTHEAST QUARTER (1/4) OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 20, 1997 AS DOCUMENT NUMBER 97195157.

PARCEL II:

PERMANENT RECIPROCAL AND NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL I FOR, USE OF PARKING AREAS AND COMMON AREAS; USE OF ENTRANCES, EXITS, DRIVEWAYS, WALKS, SERVICE DRIVES, DIRECTIONAL SIGNS, AND LIGHTING FACILITIES; INGRESS, EGRESS, ACCESS, AND PARKING FOR VEHICULAR OR PEDESTRIAN TRAFFIC OVER PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS, AND SERVICE DRIVES; USE OF STORM DRAINAGE AND RETENTION FACILITIES, LANDSCAPING, PUBLIC REST ROOMS, OTHER PUBLIC FACILITIES AND DIRECTIONAL SIGNS ;LOCATION OF BUILDINGS WITHIN CERTAIN AREAS; DESIGN, CONSTRUCTION AND MAINTENANCE OF PERMITTED BUILDINGS; MAINTENANCE OF BUILDINGS AND VACANT AREAS; REPAIR AND MAINTENANCE OF COMMON AREA; AND PERMITTED SIGNS, CREATED, DEFINED AND LIMITED BY THAT CERTAIN SHOPPING CENTER RECIPROCAL EASEMENT AND OPERATION AGREEMENT DATED JUNE 20, 1991 AND RECORDED JUNE 21, 1991, AS DOCUMENT NUMBER 91303346.

SARNOFF ♦ BACCASH

PROPERTY TAX LAW

November 26, 2019

Village of Tinley Park
Attn: Kimberly Clarke
16250 S. Oak Park Ave.
Tinley Park, Illinois 60477
kclarke@tinleypark.org

**Re: Class 7a Incentive Resolution Request
Park Ridge Midwest Realty Group, LLC
16200 S. Harlem Ave.
Tinley Park, Illinois 60477
PINs: 27-24-202-022-0000**

Dear Ms. Clarke:

Park Ridge Midwest Realty Group, LLC (“Applicant”) is requesting a Resolution supporting and consenting to a Class 7a Incentive on the above-referenced property based on occupation of an abandoned property that has been vacant for greater than 24 continuous months, with a purchase for value and substantial rehabilitation. The Applicant plans to rehabilitate the currently abandoned building for its related entity, Bandana’s Missouri, LLC d/b/a Bandana’s Bar-B-Q (“Bandana’s”), to occupy for its own use as a full-service restaurant.

In 1996 the first Bandana’s was opened in Arnold, Missouri and is now a full-service Bar-B-Q restaurant chain with 24 corporate restaurants and 4 franchise restaurants currently in four states (Missouri, Illinois, Iowa and Indiana). The goal then, as now, to provide the best Southern Style Bar-B-Q with unprecedented quick service in a family friendly atmosphere. Bandana’s continues to be family owned and operated and has been able to grow due to the quality of its food and employees. Bandana’s utilizes real wood pit smokers operating 24 hours a day, which is why you can “Smell That Smoke” every time you come to a Bandana’s.

Bandana’s plans to start and operate at the subject property with approximately 45 employees (approximately 10 full-time and 35 part-time), all of which will likely be new hires. Bandana’s will look to hire all qualified Village of Tinley Park residents for future hires. In addition, the Applicant expects that Bandana’s will generate a strong sales tax at the subject property. Specifically, the Applicant expects this site to generate approximately \$195,000 in sales tax per year. The Village of Tinley Park can also expect that Bandana’s employees will invest commercially back into the community by visiting local establishments such as gas stations, grocery stores and more. Additionally, Bandana’s will attract business and various customers to the Village in the course of its operations.

We also note that initially 3 to 5 corporate trainers will spend roughly two months training new managers and staff in the Bandana’s way to do things and will stay at local hotels. In addition, corporate officers and other guests will periodically visit the subject property and will stay at local hotels. Additionally, Bandana’s has been a good neighbor at other locations and plans to be in the Village of Tinley Park.

Kimberly Clarke
November 26, 2019
Page 2

A few examples at other Bandana's locations include a "Dine to Donate" fundraising program for schools and groups to dine and earn up to 20% back, partnering with the March of Dimes for its annual Bikers for Babies campaign and partnering with the BackStoppers to raise money for fallen police officers. Bandana's will look to continue its history of being a good neighbor at the subject property.

The subject property consists of an approximately 48,351 square foot site with an approximately **4,245 square foot building that has been 100% vacant and unused since April, 2015 and is in need of significant improvements.** Therefore, the Applicant will have to complete substantial rehabilitation to make the subject property ready for Bandana's use. The Applicant has allotted approximately \$400,000 to \$450,000 to immediately rehabilitate the subject property, which will create approximately 10 to 15 construction/rehabilitation jobs. These improvements will be to update the landscaping, add new signage and to rehabilitate the exterior and interior to match the look of other Bandana's restaurants as well as to complete other general maintenance. Please note, however, that these construction costs could significantly vary for a variety of reasons depending cosmetic improvements and market variances. Further inspections of the subject property may require additional improvements.

The Applicant believes that the proposed rehabilitation and occupancy of the subject property will result in a major increase in employment, property taxes and sales tax at this site. However, the above is dependent on securing the Class 7a Incentive on the subject property.

Therefore, please review this letter and the attached materials, and place the Applicant on the agenda for the December 7, 2019 Village of Tinley Park Economic and Commercial Commission meeting, where it will present its request for the Village of Tinley Park to pass a Resolution supporting and consenting to a Class 7a Incentive on the subject property based on occupation of an abandoned property that has been vacant for greater than 24 continuous months with a purchase for value and substantial rehabilitation. In support of the above, enclosed please find a Class 7a Eligibility Application along with all required information and documentation available to date, including:

1. Economic Disclosure Statement.
2. Affidavit attesting to vacancy.
3. Legal description and square footage of the land and building on the subject property.
4. Survey and aerial of the subject property.
5. Description of the nature of the project, the intended use of the subject property and information regarding the applicant and user.
6. Information satisfying the five Class 7a Incentive factors: Designation of Area; Real Estate Tax Analysis; Viability and Timeliness; Assistance and Necessity; Increased Tax Revenue and Employment.

Should you have any questions or concerns, or require additional information, please do not hesitate to contact me at (312) 782-8310.

Sincerely,
SARNOFF & BACCASH


Zachary A. Kafitz



CLASS 7A
ELIGIBILITY APPLICATION

CONTROL NUMBER

Carefully review the Class 7a Eligibility Bulletin before completing this Application. For assistance, please contact the Assessor's Office, Development Incentives Department (312) 603-7529. This application, a filing fee of \$500.00, and supporting documentation must be filed as follows:

This application must be filed PRIOR TO the commencement of New Construction or the commencement of Substantial Rehabilitation Activities or PRIOR TO the Reoccupation of Vacant/Abandoned Property.

Applicant Information

Name: Park Ridge Midwest Realty Group, LLC
Company: See above Telephone: (636) 537-8200
Address: 16141 Swingley Ridge Rd., Suite 205
City: Chesterfield State: MO Zip Code: 63017
Email Address: _____

Contact Person (if different than the Applicant)

Name: Rick White
Company: See above Telephone: ()
Address: _____
City: _____ State: _____ Zip Code: _____
Email Address: _____

Property Description (per PIN)

If you are applying for more than three different PINs, please submit the additional PIN information in an attachment.

Street address: (1) 16200 S. Harlem Ave.
Permanent Real Estate Index Number: 27-24-202-022-0000
(2) _____
Permanent Real Estate Index Number: _____
(3) _____
Permanent Real Estate Index Number: _____

City: Tinley Park State: IL Zip Code: 60477
Township: Orland Existing Class: 5-17

Identification of Persons Having an Interest in the Property

Attach a complete list of all owners, developers, occupants and other interested parties (including all beneficial owners of a land trust) identified by names and addresses, and the nature and extent of their interest.

Property Use

General Description of Proposed Property Usage Restaurant

Attach a detail description of the precise nature and extent of the intended use of the subject property, specifying in the case of the multiple uses the relative percentages of each use.

Attach legal description, site dimensions and square footage and building dimensions and square footage.

Include copies of materials, which explain the occupant's business, including corporate letterhead, brochures, advertising material, leases, photographs, etc.

Nature of Development

Indicate nature of the proposed development by checking the appropriate space:

- New Construction (Read and Complete Section A below)
- Substantial Rehabilitation (Read and complete Section A below)
- Occupation of Abandoned Property – No Special Circumstances (Read and complete Section B)
- Occupation of Abandoned Property – With Special Circumstances (Read and complete Section C)

A. If the proposed development consists of *new construction* or *substantial rehabilitation*, provide the following information:

Estimated date of construction commencement (excluding demolition, if any):	<u>See attached</u>
Estimated date of construction completion:	<u>See attached</u>
Total redevelopment cost, excluding land:	\$ <u>See attached</u> <i>(Not to exceed \$2 million)</i>

Attach copies of the following:

1. specific description of the proposed new construction or substantial rehabilitation
2. current plat of survey for subject property
3. 1st floor plan or schematic drawings
4. building permits, wrecking permits and occupancy permits (including date of issuance)
5. complete description of the cost and extent of substantial rehabilitation or new construction (including such items as contracts, itemized statements of all direct and indirect costs, contractor's affidavits, etc.)

B. If the proposed development consists of the re-occupancy of *abandoned property*, provide the following information:

1. Was the subject property vacant and unused for at least 24 continuous months prior to purchase for value or substantial rehabilitation?

YES NO

When and by whom was the subject property last occupied and used?

See attached

Attach copies of the following documents:

- (a) sworn statements from persons having personal knowledge attesting to the fact and duration of vacancy and abandonment
- (b) records (such as statements of utility companies), indicating that the property has been vacant and unused and the duration of such vacancy

2. Application must be made to Assessor prior to reoccupation:

Estimated date of reoccupation: See attached Date of purchase: TBD

Name of purchaser: Park Ridge Midwest Realty Group, LLC

Name of seller: Sundance Development, Inc.

Relationship of purchaser to seller: None

Attach copies of the following documents:

- (a) sale contract
- (b) recorded deed
- (c) assignment of beneficial interest
- (d) real estate transfer declaration

C. If the applicant is seeking special circumstances to establish that the property was abandoned for purposes of the incentive where there was a purchase for value, but the period of *abandonment prior to purchase was less than 24 continuous months*, please complete section (1) below. If the applicant is seeking special circumstances to establish that the property was abandoned for purposes of the incentive where there was *no purchase for value*, but the period of abandonment prior to application was 24 continuous months or greater, please complete section (2) below.

1. How long was the period of abandonment prior to the purchase for value?

When and by whom was the subject property last occupied prior to the purchase for value?

- (a) Sworn statements from person having personal knowledge attesting to the fact and duration of vacancy and abandonment.
- (b) Records (such as statements of utility companies) which demonstrate that the

- property was vacant and unused and indicated duration of such vacancy.
- (c) Include the finding of special circumstances supporting "abandonment" as determined by the municipality, or the County Board, if located in an unincorporated area. *Also include the ordinance or resolution for the Board of Commissioners of Cook County stating its approval for the less than 24-month abandonment period.*

Application must be made to Assessor prior to commencement of reoccupation of the abandoned property.

Estimated date of reoccupation: _____

Date of purchase: _____

Name of purchaser: _____

Name of seller: _____

Relationship of purchaser to seller: _____

Attach copies of the following documents:

- (a) Sale contract
- (b) Closing statement
- (c) Recorded deed
- (d) Assignment of beneficial interest
- (e) Real estate transfer declaration

2. Was the subject property vacant and unused for at least 24 continuous months prior to the filing of this application?

YES NO

When and by whom was the subject property last occupied prior to filing this application?

Attach copies of the following documents:

- (a) Sworn statements from persons having personal knowledge attesting to the fact and duration of vacancy and abandonment.
- (b) Records (such as statements of utility companies) which demonstrate that the property was vacant and unused and indicate duration of such vacancy.
- (c) Include the finding of special circumstances supporting "abandonment" as determined by the municipality, or the County Board, if located in an unincorporated area. *Also include the ordinance or resolution for the Board of Commissioners of Cook County stating its approval for lack of a purchase for value.*

Application must be made to Assessor prior to commencement of reoccupation of the abandoned property.

Estimated date of reoccupation: _____

Employment Opportunities

How many construction jobs will be created as a result of this development? Est. 10 to 15

How many permanent full-time and part-time employees do you now employ in Cook County?

Full-time: See attached Part-time: See attached

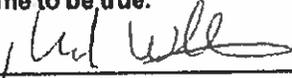
How many new permanent full-time jobs will be created as a result of this proposed development? See attached

How many new permanent part-time jobs will be created as a result of this proposed development? TBD

Local Approval

A certified copy of a resolution or ordinance from the municipality in which the real estate is located (or the County Board, if the real estate is located in an unincorporated area) must accompany this Application. The ordinance or resolution must expressly state that the municipality supports and consents to this Class 7a Application and that it finds Class 7a necessary for development to occur on the subject property. This resolution must expressly state that the five eligibility factors, which must be present to demonstrate the area is "in need of commercial development", are satisfied.

I, the undersigned, certify that I have read this Application and that the statements set forth in this Application and in the attachments hereto are true and correct, except as those matters stated to be on information and belief and as to such matters the undersigned certifies that he/she believes the same to be true.


Signature
RICK WHITE
Print Name

11/25/19
Date
Manager
Title

**Note: If title to the property is held in trust or by a corporation or a partnership, this Class 7a Eligibility Application must be signed by the beneficiary, officer and/or general partner.*



Interoffice Memo

Date: December 12th, 2019

To: Village Board of Trustees

From: Dominic Sanfilippo, Executive Assistant to the Mayor

Subject: PACE Contract Discussion

The Village of Tinley Park has contracted with PACE's Paratransit Service for a number of years to provide one (1) ADA-accessible bus for its Dial-a-Ride Service for senior & handicapped Tinley Park residents; it annually pays PACE around ~\$55,000 to do so. It also has operated a series of its own vehicles to complement the same Dial-a-Ride Service with a second vehicle. On October 12th, 2018, the Village purchased its own bus for \$68,563.00 (with \$3,149.29 of Village branding graphics, for a total cost of \$71,712.29) to complement the leased PACE bus for a total fleet of two (2) buses; one owned by the Village, and one leased from PACE. Both vehicles are lift accessible, and residents can book rides by calling Village Senior Bus part-time dispatchers, whose office is currently located in the Public Safety Building.

The dispatchers run the buses on similar schedules, Monday through Friday during the morning & afternoon; however, the Village Bus can make trips outside the Village limits to neighboring communities for medical appointments. Reservations are asked for at least 48 hours in advance.

The current contract for the PACE bus expires on December 31st, 2019. Estimates in the proposed 2020 contract that PACE sent the Village are as follows:

- Revenue: \$7,629
- Total Expenses: \$79,660
 - Operations: \$72,023
 - Maintenance: \$3,066
 - Administration: \$4,571
- Operating Deficit: **\$72,031**
- PACE Subsidy: \$17,448
- Local Share: \$54,583
- Ridership: 5,816 individual rides
- Vehicle Hours: 1,324¹

¹ PACE 2020 Paratransit Service Provider Proposed Agreement provided to the VoTP.

To be able to drive either bus in the Village's operation, a current CDL driver's license is required with a "P" passenger endorsement, along with an extensive background check & requisite experience. PACE also requires drivers who operate any of its buses to go through their own certification and training process. Safety & professionalism are paramount for all Village part-time drivers and dispatchers. The Village currently employs three part-time drivers and two part-time dispatchers; additional staff is urgently needed at both positions. The hiring process is currently open and Human Resources has been receiving applications and (together with the Mayor's Office) interviewing applicants as of the week of December 9th; successful additional hires are hoped for but uncertain as of this point due to a variety of factors.² Departures of current employees from either position would leave the service not fully staffed and unable to operate at its current capacity.

With staffing numbers uncertain over the next calendar year, the Mayor's Office asked PACE whether a shorter-term monthly contract is an option; however, PACE affirmed that signing their standard January 1st-December 31st yearly contract is the only option.

The Village has enjoyed & continues to enjoy a positive working relationship with PACE; however, in light of this staffing uncertainty going into the new year, the Mayor recommends forgoing the PACE contract for the 2020 calendar year while continuing to operate its already-owned Village Bus and a second interim vehicle as needed for the Village Dial-a-Ride service. Simultaneously, other long-term options can be explored in the 2020 calendar year, whether that be purchasing a full second bus depending on need, revisiting the contract with PACE at a future date, etc. It is important to note that the Village Bus will **continue** to service Tinley residents in any scenario.

If the Village were to operate only its Village bus after December 31st, 2019, it would likely be able to continue to service at least 75% of its current rides with its one bus. There are also vehicles within the current Village fleet that could possibly be used in an interim capacity after January 1st, filling a potential gap if identified and needed. The 4 townships that cover the Village—Orland Township, Bremen Township, Rich Township, and Frankfort Township—all have their own dial-a-ride transportation services, which currently serve & could continue to serve as an alternative riding option.³ PACE also runs regular, full-length bus routes through the Village (standard, non Village operated routes, not Dial-a-Ride.)

If the Board potentially explores allocating space in the budget for purchasing a second Dial-a-Ride vehicle for the Village fleet, it could have more capacity to operate these & other potential Village transportation services on its own in the future, potentially through its own distinct Transportation division, akin to many other municipalities who offer similar services.

² According to HR & office analysis, one potential factor that can be a challenge in hiring experienced & qualified drivers, in particular, is the part-time nature/wage of this position; many CDL-endorsed drivers who regularly keep their CDL licenses & passenger endorsements up-to-date drive in full-time roles.

³ <http://www.villageoffrankfort.com/live/resident-resources/dial-a-ride>, <http://orlandtownship.org/seniors/>, <https://www.richtownship.org/transportation>, <http://bremementownship.org/senior-services>



THE VILLAGE OF TINLEY PARK
Cook County, Illinois
Will County, Illinois

RESOLUTION
NO. 2019-R-121

RESOLUTION AUTHORIZING THE
EXECUTION OF PARATRANSIT GRANT AGREEMENT

JACOB C. VANDENBERG, PRESIDENT
KRISTIN A. THIRION, VILLAGE CLERK

CYNTHIA A. BERG
WILLIAM P. BRADY
WILLIAM A. BRENNAN
DIANE M. GALANTE
MICHAEL W. GLOTZ
MICHAEL G. MUELLER
Board of Trustees

RESOLUTION NO. 2019-R-121

**RESOLUTION AUTHORIZING THE
EXECUTION OF PARATRANSIT GRANT AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, did consider a bus transit agreement, a true and correct copy of such agreement (the "Paratransit Grant Agreement") being attached hereto and made a part hereof as **EXHIBIT 1**; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interests of said Village of Tinley Park that said Agreement be entered into by the Village of Tinley Park.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Tinley Park, Cook and Will Counties, Illinois as follows:

Section 1: The preambles hereto are hereby made a part of, and operative provisions of, this Resolution as fully as if completely repeated at length herein.

Section 2: That this President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interests of the Village of Tinley Park and its residents that the aforesaid "Paratransit Grant Agreement" be entered into and executed by said Village of Tinley Park, with said Agreement to be substantially in the form attached hereto and made a part hereof as **EXHIBIT 1**.

Section 3: That the President and Clerk of the Village of Tinley Park, Cook and Will Counties, Illinois, are hereby authorized to execute for and behalf of said Village of Tinley Park the aforesaid Paratransit Grant Agreement.

Section 4: That this resolution shall take effect from and after its adoption and approval.

ADOPTED this 17th day of December, 2019, by the Corporate Authorities of the Village of Tinley Park on a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED this 17th day of December, 2019, by the President of the Village of Tinley Park.

Village President Pro-Tem

ATTEST: _____
Village Clerk

EXHIBIT 1

Paratransit Grant Agreement

STATE OF ILLINOIS)
COUNTY OF COOK) SS
COUNTY OF WILL)

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2019-R-121, “**A RESOLUTION AUTHORIZING THE EXECUTION OF PARATRANSIT GRANT AGREEMENT,**” which was adopted by the President and Board of Trustees of the Village of Tinley Park on December 17, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 17th day of December 2019.

KRISTIN A. THIRION, VILLAGE CLERK

2020

PARATRANSIT SERVICE PROVIDER AGREEMENT

BY AND BETWEEN

SUBURBAN BUS DIVISION

OF THE

REGIONAL TRANSPORTATION AUTHORITY (PACE)

AND

Village of Tinley Park

SERVICE PROVIDER

PROVIDER

**Village of Tinley Park
16250 S. Oak Park Avenue
Tinley Park, IL 60477**

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EXHIBIT F	Service Provider's Certification
EXHIBIT G	Form Of Opinion Of Service Provider's Counsel

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, to be effective as of January 1, 2020, by and between the SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, operating under the name and hereinafter referred to as "Pace" and "Service Provider" as shown on the cover page to this Agreement.

WITNESSETH:

WHEREAS, the Regional Transportation Authority was created as a single authority to be responsible for providing, aiding and assisting public transportation in the northeastern area of the State of Illinois, including financial review and facilitation of public transportation and its providers, (70 ILCS 3615/1.02); and

WHEREAS, Pace was created as the Suburban Bus Division of the Regional Transportation Authority to be responsible for providing public transportation by bus, (70 ILCS 3615/3A.01); and

WHEREAS, Pace may enter into service provider agreements with governmental and private sector entities to obtain public bus service and to provide for payment of operating, capital and other expenses upon such terms and conditions as Pace shall provide in any such agreements; and

WHEREAS, Pace desires to have Service Provider provide the Transportation Services as described in this Agreement and Service Provider desires to provide such services;

NOW, THEREFORE, in consideration of the promises and agreements herein set forth, Pace and the Service Provider HEREBY AGREE as follows:

ARTICLE I

DEFINITIONS

Agreement Term. The term specified in Section 11.1 of this Agreement, as such term may be reduced or extended pursuant to the provisions of this Agreement.

Approved Budget. The budget of approved expenses attached to this Agreement as Exhibit A, as the same may be revised from time-to-time pursuant to this Agreement.

Approved Maximum Service Reimbursement Amount. The amount shown on the Approved Budget for the line designated "Approved Maximum Service Reimbursement Amount," as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Equipment. Pace Equipment and Service Provider Equipment.

Service Provider Application. The submission of a proposed budget and related material in accordance with Section 10.9 shall be the Service Provider's reimbursement application to Pace.

Service Reimbursement Amount. The total amount payable pursuant to Section 10.1 of this Agreement.

Line Item. A specific, separately identified category of expense listed on the Approved Budget.

Line Item Budget. The amount of the Approved Budget allocated to a specific Line Item.

Line Item Budget Maximum. The amount shown on the Approved Budget for each Line Item, as such amount may be increased or decreased during the Agreement Term pursuant to the provisions of this Agreement.

Monthly Report. The monthly report of revenue and expenses and other reports and information as described in the Pace Paratransit Manual.

Pace Equipment. All assets of every kind, including Pace Vehicles provided by Pace to the Service Provider, at any time, whether before or after the execution of this Agreement.

Pace Paratransit Manual. The manual of Pace policies, practices and procedures prepared and regularly amended, revised and supplemented by Pace, as it may be from time to time amended, revised or supplemented by Pace during the Agreement Term. All references to the Pace Paratransit Manual shall be deemed to be references to the most current provisions of the Pace Paratransit Manual. All references to any specific section, exhibit or provision of the Pace Paratransit Manual are for convenience only and shall be deemed to be references to any and all relevant provisions of the Pace Paratransit Manual.

Pace Vehicle. All Vehicles of every kind provided by Pace to the Service Provider at any time, whether before or after the execution of this Agreement and whether in connection with this Agreement or in connection with any prior agreement or relation between Pace and Service Provider or in connection with the provision of services pursuant to this Agreement or any prior agreement or relation, including, without limitation, all Vehicles listed in Exhibit B hereto, and all other Vehicles provided by Pace to Service Provider, whether or not listed on Exhibit B hereto.

Operating Expenditure. This term shall mean all expenses properly classified as operating expenses incurred by the Service Provider but in no event shall include:

- (a) any amount required to be paid by Service Provider to Pace pursuant to this Agreement or pursuant to any other agreement between Pace and Service Provider;
- (b) any expense not incidental to, or necessary for, the provision of the Transportation Services;
- (c) any excessive or unreasonable expense;
- (d) any expense for local government taxes, fees, licenses or other charges unless specifically included in the Approved Budget or its supporting documents or unless approved in writing by Pace;

- (e) any expense not made in conformance with the Approved Budget or at the direction or with the approval of Pace or pursuant to a requirement of federal or state law determined by Pace to be applicable;
- (f) any expense for insurance policies which are duplicative of coverage provided under Pace's Risk Management Program (as provided in Article XIII of this Agreement);
- (g) any expense resulting from the amortization or payment of any debt incurred prior to the Agreement Term or incurred without the approval of Pace;
- (h) any interest expense unless approved in writing by Pace;
- (i) any sinking fund expense;
- (j) any expense resulting from the amortization of any intangible cost to the extent it does not meet the evaluative criteria for allowable amortization established by Pace from time to time;
- (k) any depreciation expense;
- (l) any non-cash expense incurred or accrued without Pace's prior written approval; and
- (m) any expenses related to service identified in Exhibit D as not being reimbursed by Pace.

Risk Financing Program. The risk management program established by Pace to consolidate into a single comprehensive system the administration of all bodily injury and property damage claims asserted against Pace and Service Providers arising from Transportation Services provided with Pace vehicles, as the same may be from time to time amended or revised, as further described in Section 8.2 of this Agreement.

Transportation Revenue. All amounts properly classified as revenue or income generated by, derived from, attributable to or related to the Transportation Services during the Agreement Term, regardless of the date of collection. This term shall not include any funds agreed to by Pace to be designated as local share in an Approved Budget.

Transportation Services. The services specified in Subsection 2.1A of this Agreement and Exhibit D as the same may be modified from time to time pursuant to the provisions of Subsection 2.1B of this Agreement.

Vehicle. Any means of transportation or conveyance such as, but not limited to, a bus, a truck, a van, or an automobile.

ARTICLE II

SCOPE AND DESCRIPTION OF SERVICES

Section 2.1. Transportation Services.

A. Transportation Services. Throughout the Agreement Term, Service Provider, acting as an independent contractor for the benefit of Pace and not as an agent for Pace, agrees to provide the service as described in Exhibit D. As an integral part of providing such service, Service Provider shall at all times:

- (1) comply with all Pace service standards as set forth in the Pace Paratransit Manual;
- (2) comply with all of the other provisions of this Agreement;
- (3) take reasonable steps to assure the safety and reasonable comfort and convenience of the public utilizing such service;
- (4) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to collection, security for and disposition of fares and other Transportation Revenue;
- (5) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to matters such as passes, tickets, coupons, tokens, transfers, transfer systems, interconnections between different modes of transportation and interconnections between different transportation services;
- (6) comply with all of the policies, practices, procedures, terms and conditions required by use of federal, State of Illinois and RTA funds, including, without limitation, conditions pertaining to rates charged to students, elderly and handicapped persons, the prohibition of charter bus operations, the prohibition of school bus operations, employment, and reporting;
- (7) comply with all policies, practices, procedures, terms and conditions as may be directed by Pace with regard to the availability and distribution of schedules and other printed material related to such service and related transportation services;
- (8) conduct such services, and its business and operations as they relate to such services, in a safe, sound, economical and efficient manner;
- (9) comply with all Pace efforts to improve service efficiency; and
- (10) comply with all applicable provisions of federal, state and local law.

B. Changes in Transportation Services.

- (1) Service Provider Initiated Changes. Service Provider shall not, without the prior written approval of Pace, initiate or permit any change to the Transportation Services specified in Subsection 2.1A above or Exhibit D. Service Provider may propose changes in the Transportation Services by presenting a proposal therefore in writing to Pace at least 45 days in advance of the date on which the change is proposed to take effect. Such change shall not be implemented unless expressly approved in writing by Pace. Notwithstanding the foregoing, Service Provider may implement minor operational

changes that will neither (a) affect any fare or system for passes, transfers, interconnections or similar programs nor (b) substantially change the service area or service hours provided Service Provider first gives Pace at least 30 days notice of its intent to make such minor change and if Pace has not disapproved such proposed minor change in writing within 15 days following receipt of such notice. Service Provider may, in addition, make minor operational changes of an emergency nature without Pace approval; provided, however, that no such change shall be made that would increase reimbursement by Pace and provided, further, that Service Provider shall give Pace notice of each such minor change as soon as possible, and in no event later than 12 hours after it is made.

- (2) Pace Initiated Changes. Pace may modify the Transportation Services upon written notice to the Service Provider, to reflect decisions made by Pace with regard to the service design and operation of the service. Pace further reserves the right to modify the Transportation Services described in Exhibit D and to adjust the Approved Budget.
- (3) Pace Discretion. Nothing in this Subsection 2.1B shall be construed to require Pace to approve any change to the Transportation Services specified in Subsection 2.1A, and Pace may withhold its approval of any such change in its sole discretion.

Section 2.2. Force Majeure. Service Provider shall not be in default in its obligation to provide Transportation Services as herein required to the extent that it is unable to provide such services as a result of abnormally severe weather or road conditions, strikes or other labor stoppages, unavailability of sufficient vehicles through no fault of the Service Provider and other events and conditions that are beyond the reasonable ability of Service Provider to control or remedy and that render provision of such service impossible or not reasonably feasible. In any such case, Service Provider shall provide such modified or reduced services as are practicable under the circumstances and shall use all reasonable efforts to restore full services in accordance with this Agreement at the earliest possible time. Immediately upon the occurrence of, or the imminent threat of the occurrence of, any such event or condition, and prior to implementing any reduced or modified service, Service Provider shall notify Pace by telephone, with written confirmation as soon as possible thereafter, of:

- (1) The nature of the event or condition;
- (2) The actual or expected time of the occurrence of the event or condition and its expected duration;
- (3) The impact of the event or condition on Transportation Services;
- (4) The modified or reduced service that Service Provider proposes to provide during the continuation of the event or condition; and

(5) The steps Service Provider proposes to take to restore full service.

ARTICLE III EQUIPMENT

Section 3.1. Provision of Equipment By Pace.

A. Pace Rights With Respect to Pace Vehicles and Other Pace Equipment. This Agreement applies to all Pace Equipment provided by Pace to Service Provider at any time. If Paragraph A of Exhibit B contains the word "NONE," and no Pace Equipment is provided to the Service Provider during the Agreement term, Section 3.1, Section 3.2, and Section 3.3 shall be of no force or effect; otherwise, it shall apply to any Vehicles listed in Exhibit B. Pace reserves the absolute right, in its sole discretion, (1) to determine the number and type of Pace Vehicles provided to Service Provider, (2) to substitute or replace any Pace Vehicles provided to Service Provider and (3) to direct the return to Pace or its designee of any or all Pace Vehicles at any time; provided, however, that in the absence of fault by Service Provider or other good cause, Pace shall not take action under this Paragraph 3.1A that would have the effect of preventing or materially and adversely affecting the ability of Service Provider to provide the Transportation Services as that service may be modified in accordance with Subsection 2.1(B)(2).

B. Pace Equipment Provided; Inventory and Documentation. Service Provider agrees to comply with all Pace procedures for handling Pace Equipment in accordance with the Pace Paratransit Manual. Service Provider agrees to cooperate fully with Pace in developing and maintaining an accurate inventory of all Pace Equipment from time to time in the possession of Service Provider. Service Provider shall complete and process all documentation necessary to evidence and record the receipt, possession, return or transfer of any Pace Equipment coming into, being in or leaving its possession, all as required by the Pace Paratransit Manual. Copies of all such documentation with respect to Pace Vehicles shall be attached to and become part of Exhibit B.

C. No Consideration. Service Provider shall not be required to pay any separate consideration for the use of the Pace Equipment during the Agreement Term.

D. Service Provider Acceptance of Pace Equipment. Service Provider shall accept delivery of Pace Equipment at such times and places within the six county region as Pace shall designate upon notice to Service Provider that such Equipment is available for delivery. In case of any unreasonable delay, neglect, refusal, or failure to accept any Pace Equipment

at the time and place designated, all costs and expenses incurred by Pace arising from such delay, neglect, refusal or failure shall be reimbursed by Service Provider immediately upon written demand by Pace. Such costs and expenses shall not be an Operating Expenditure for purposes of this Agreement.

E. Pace Equipment Returns and Substitutions. Any Pace Equipment that Pace designates to be returned or transferred shall, upon reasonable notice, be delivered by Service Provider at the time and to the place designated by Pace within the six county region. Service Provider also shall accept delivery of any substitute Pace Equipment at the time and place designated by Pace within the six county region. All terms and conditions of this Agreement shall apply to such substitute Pace Equipment.

F. Surplus Pace Equipment. Any Pace Vehicle not scheduled for use in providing or supporting the Transportation Services and not required as a spare, as determined by Pace, for a period of ten days or more shall be considered surplus Pace Equipment. Any other Pace Equipment not required, as determined by Pace, for providing Transportation Services or other services pursuant to this Agreement shall be considered surplus Pace Equipment. Pace may require Service Provider either to return such surplus Pace Equipment to Pace, to transfer it to Pace's designee or to store it at such locations as Pace may direct.

G. Pace Right to Repossess Pace Equipment. Upon the failure of Service Provider to return or deliver any Pace Equipment as directed by Pace, or if Service Provider fails to use, repair or maintain any Pace Equipment as required by this Agreement, Service Provider shall permit Pace, without demand, legal process, or a breach of the peace, to enter any premises where the Pace Equipment is or may be located and to take possession of and remove the Pace Equipment. Service Provider shall not prosecute or assist in the prosecution of any claim, suit, action, or other proceeding arising out of any such repossession by Pace. Service Provider shall reimburse Pace for any and all costs incurred by Pace in connection with actions taken by Pace pursuant to this Subsection. Such costs shall not be Operating Expenditures under this Agreement.

H. Pace Equipment Inspection. Pace shall have the right to inspect any and all Pace Equipment or cause any or all Pace Equipment to be inspected at any time, with or without prior notice to Service Provider. Pace shall also have the right to demand from time to time a written statement from Service Provider setting forth the condition of the Pace Equipment or any part of it. Service Provider shall furnish such a statement to Pace within ten days after receipt of Pace's demand therefore. Should Pace or its designee determine, in its sole discretion, that any Pace Equipment has not been maintained in accordance with this Agreement or the Pace Paratransit Manual, Pace or its designee shall report all deficiencies

to Service Provider in writing. Except for safety related deficiencies, which shall be corrected as soon as reasonably possible and prior to placing the vehicle in service, Service Provider shall have 30 days to correct the reported deficiencies.

I. Return of Pace Equipment and Related Records Upon Termination. Immediately following termination of this Agreement, whether by completion of the Agreement Term or any reason, Service Provider shall surrender and deliver to Pace all Pace Equipment and related records as required by Section 11.4 of this Agreement.

J. Title to Pace Equipment; Licensing and Registration. Service Provider acknowledges and agrees that Pace owns all the Pace Equipment. All Pace Vehicles shall be licensed and registered by Pace in the name of Pace and at the expense of Pace. Nothing contained herein shall affect Pace's absolute ownership of and title to the Pace Equipment, such ownership and title being hereby expressly reserved to and retained by Pace. Service Provider shall not obtain, acquire or otherwise be construed to own any property or other interest in the Pace Equipment except the right to use it for the purposes and on the conditions stated in this Agreement during the Agreement Term. Service Provider further agrees that it will not, in any manner, allow or permit the Pace Equipment, or any part of it, to be pledged, seized, or held for any tax, debt, lien or other obligation. Should the Pace Equipment, or any part of it, become subject to or encumbered by any tax, debt, lien or other obligation during the Agreement Term, or before the actual delivery of the Pace Equipment to Pace after the Agreement Term, Service Provider shall, subject to its right to in good faith protest any such tax, debt, lien or other obligation, promptly pay or discharge such tax, debt, lien or other obligation and relieve such Pace Equipment from the encumbrance thereof.

K. Warranty. NEITHER PACE NOR SERVICE PROVIDER IS THE MANUFACTURER OF THE PACE EQUIPMENT NOR THE MANUFACTURERS' AGENT, AND NEITHER MAKES ANY EXPRESS OR IMPLIED WARRANTY OF ANY NATURE REGARDING THE PACE EQUIPMENT, INCLUDING BUT NOT LIMITED TO: ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; ITS DESIGN OR CONDITION; ITS WORKMANSHIP; ITS FREEDOM FROM LATENT DEFECTS; ITS COMPLIANCE WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT; OR ITS NONINFRINGEMENT OF ANY PATENT, TRADEMARK OR LICENSE. Provided that Pace or the manufacturer has supplied required warranty documents to Service Provider, Service Provider shall take all actions it is authorized to take under this Agreement to preserve any and all manufacturers' warranties regarding the Pace Equipment. This Agreement shall not operate to release or waive any rights of Pace or Service Provider against any person not a party hereto, including the manufacturer of the Pace Equipment.

Section 3.2. Maintenance of Pace Equipment by Service Provider.

A. **Maintenance Requirements.** Service Provider shall at all times maintain all Pace Equipment in good mechanical condition in conformity with all applicable safety practices, laws and regulations. In addition, Service Provider shall at all times maintain all Pace Equipment in accordance with the terms and provisions of this Agreement, all maintenance policies, practices, procedures, conditions and requirements contained in the Pace Paratransit Manual and all manufacturers' maintenance schedules and warranty requirements. Service Provider shall perform all preventive maintenance required pursuant to the Pace Paratransit Manual. Service Provider shall keep both the exterior and interior of all Pace Vehicles neat, clean and in first class condition at all times. Service Provider shall be responsible to assure that all Pace Vehicles are maintained at all times so as to meet the requirements of the Illinois Department of Transportation and to assure that all Pace Vehicles have valid Illinois Department of Transportation stickers affixed to them at all times.

B. **Maintenance Records.** Service Provider shall prepare and maintain accurate records relating to all maintenance work performed by or for Service Provider on all Pace Equipment and in that regard shall comply with the provisions of Article VII of this Agreement and with all applicable Pace policies, practices, procedures, conditions and requirements as set forth in the Pace Paratransit Manual. Service Provider shall maintain a separate maintenance file for each Pace Vehicle containing all maintenance records pertaining thereto. Service Provider shall also complete, maintain and transmit to Pace all maintenance forms required in the Pace Paratransit Manual, and any other records requested by Pace including, without limitation, Vehicle maintenance records, fuel consumption records and all records required under Pace's preventive maintenance program.

Section 3.3. Operation of Pace Equipment By Service Provider.

A. **General Operating Standard.** Service Provider shall use and operate all Pace Equipment in accordance with the terms and provisions of this Agreement, the operating procedures set forth in the Pace Paratransit Manual and all applicable federal, state and local laws and regulations and solely for the purpose of providing the Transportation Services or as otherwise approved in writing by Pace.

B. **Pace Vehicle Identification.** Service Provider shall not change or obstruct in any way, and shall maintain, all identification markings and decals on all Pace Vehicles as supplied and affixed by Pace. Unless otherwise approved in writing by Pace, Service Provider shall

not affix to or display on any Pace Vehicle any identification marking or decal other than those supplied and affixed by Pace.

C. Storage of Pace Equipment. Service Provider shall store all Pace Equipment at suitable locations where such Equipment is protected from vandalism and theft. Indoor storage shall have adequate fire protection, which complies with all applicable federal, state and local laws and regulations and shall have the approval of the Fire Underwriters' Laboratory.

D. Fareboxes. Except as expressly approved in writing by Pace, Service Provider shall utilize only fareboxes and related equipment provided by Pace. Service Provider shall install and maintain such fareboxes in good condition.

Section 3.4. Service Provider Vehicles.

A. Applicability of Section. Vehicles, if any, to be supplied by Service Provider for use in connection with providing the Transportation Services must comply with the requirements of this section.

B. Duty to Maintain Service Provider Vehicles. Service Provider shall at all times maintain all Non-Pace Service Provider Equipment in good mechanical condition in conformity with all applicable safety practices, laws and regulations and in accordance with standards set forth in the Pace Paratransit Manual. Service Provider shall keep both the exterior and interior of all Service Provider Vehicles neat, clean and in first class condition at all times. Service Provider shall be responsible to assure that all Service Provider Vehicles are maintained at all times so as to meet the requirements of the Illinois Department of Transportation and the Pace Paratransit Manual and to assure that all applicable Service Provider Vehicles have valid Illinois Department of Transportation stickers affixed to them at all times.

ARTICLE IV

EMPLOYEES

Section 4.1. Compliance with Federal, State and Local Laws. Service Provider agrees that with respect to persons employed by it to provide the Transportation Services and Other Services, it will comply with all applicable federal, state, and local labor laws including, but not limited to, any and all laws relating to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees, and all applicable regulations established to protect the health and safety of employees, passengers, and the public-at-large. Service Provider also agrees to provide the employee protection, if required, under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. ' 1609(c), and Section 2.16 of

the Regional Transportation Authority Act, (70 ILCS 3615/2.16), for persons employed by it to provide the Transportation Services.

Section 4.2 Employees. Service Provider shall employ only such persons as are competent and qualified to provide the Transportation Services in accordance with the requirements of this Agreement and Pace policies, practices, procedures and standards. All employees shall meet all applicable qualifications established by federal, state and local laws and regulations. Drivers shall display proper courtesy toward passengers and maintain a neat and clean appearance. Service Provider shall comply with all federal and Pace requirements relating to drug and alcohol testing. Service Provider shall participate in driver training programs, if any, established by Pace during the Agreement Term and shall comply with driver and safety standards set forth in the Pace Paratransit Manual. Failure by Service Provider or any Third Party Provider of Service Provider to comply with said requirements shall constitute grounds for nonpayment of the Service Reimbursement Amount for the duration of such noncompliance.

Section 4.3. Employment Contracts and Labor Agreements. Service Provider shall notify Pace of any labor negotiations being conducted with its employees and shall keep Pace fully informed of the status and progress of such negotiations.

ARTICLE V

NON-DISCRIMINATION, EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

Section 5.1. Compliance With Federal, State and Local Laws. Service Provider shall comply with all applicable federal, state and local anti-discrimination and equal employment and business opportunity laws and regulations, including, but not limited to, the Age Discrimination in Employment Act, as amended, 29 U.S.C. ' ' 621 et seq., Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C. ' ' 2000e et seq., the Civil Rights Acts of 1866 and 1871, 42 U.S.C. ' ' 1981 and 1983; and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.

Section 5.2. Equal Employment Opportunity. Service Provider shall comply with all of the affirmative action, equal employment opportunity and disadvantaged business enterprise requirements in Exhibit E.

Section 5.3. Failure to Comply. In the event Service Provider's noncompliance with any provision set forth in Exhibit E or with any federal, state, or local anti-discrimination or equal employment or business opportunity law, including but not limited to those identified in Section 5.1 hereof, results in Service Provider being declared non-responsible and, therefore, ineligible for future contracts or subcontracts with the State of Illinois or any of its political

subdivisions or municipal corporations, this Agreement may be canceled or voided by Pace in whole or in part, and such other sanctions, penalties or remedies as may be provided by law or regulation may be imposed or invoked.

ARTICLE VI

REPORTS AND RECORDS

Section 6.1. Reports, Forms and Statements Required. Service Provider shall furnish Pace with all reports required by the Pace Paratransit Manual in accordance with the due dates specified therein. In addition, Service Provider shall furnish Pace, on a timely basis, with the following documents:

- (1) A monthly listing of any reports and documents in any way related to the Transportation Services filed by Service Provider with any government or government agency. Upon request, Service Provider shall provide Pace with a copy of any such reports and documents.
- (2) All written forms and documentation required for the administration of Pace's programs concerning students, the elderly and the handicapped. Said forms and documentation shall be furnished by Service Provider to the United States and Illinois Departments of Transportation upon Pace's request.
- (3) All correspondence, papers, notices, accident reports or documents of any nature received by Service Provider in connection with any claim or demand involving or related to Transportation Services or the Equipment.
- (4) All records required pursuant to Section 11.4 of this Agreement.
- (5) Such other reports, forms and statements as may be required by this Agreement or by federal, state or local laws or regulations or by order of any duly constituted authority.

Section 6.2. Records. Service Provider shall create and maintain accurate and complete records of all Transportation Services performed, all time spent, all materials, equipment and supplies purchased, and costs incurred in the performance of the Transportation Services pursuant to this Agreement, including all records required by this Agreement, the Pace Paratransit Manual or any applicable law or regulation. Unless Pace shall consent in writing to the destruction of any such records, and except for records required to be delivered to Pace at the end of the Agreement Term, Service Provider shall make said records available for review, inspection and audit in accordance with Section 6.3 below during the entire Agreement Term and for three years thereafter, or such longer period as may be required by law or any applicable grant; provided, however, that prior to the disposal or destruction of any such record by Service Provider following said period, Service Provider shall give notice to

Pace of any record or records to be disposed of or destroyed and the intended date, which shall be at least 90 days after the effective date of such notice, of disposal or destruction. Pace shall have 90 days after receipt of any such notice to give notice to Service Provider not to dispose of or destroy said record or records and to require Service Provider to deliver such record or records to Pace or its designee, at Pace's expense, on a confidential basis if appropriate.

Section 6.3. Inspections and Audits. Pace shall have the right, with or without prior notice to Service Provider, to review, inspect and audit all Transportation Services performed pursuant to this Agreement, and all information and records related thereto, at all reasonable times during and following the performance of the Transportation Services. The phrase "all information and records related thereto" as used in this Section shall mean all information and records under the control or supervision of, or reasonably available to, Service Provider relating to this Agreement or the Transportation Services that are reasonably necessary for Pace to verify or audit Service Provider's performance under this Agreement, or the accuracy or appropriateness of any Operating Expenditure or portion thereof, ridership information, or Service Provider's compliance with this Agreement or any portion thereof, including but not limited to all data, samples, records, reports, documents, memoranda, maps, estimates, specifications, notes, studies, tapes, photographs, film, computer programs or drawings, whether in preliminary, draft, final or other form. Pace shall perform such review, inspection or audit in a manner that will not unduly delay or interfere with Service Provider's performance under this Agreement. Service Provider shall cooperate with Pace, and provide reasonable facilities to Pace to assist Pace in any such review, inspection or audit. Pace may perform any such review, inspection or audit through an officer, employee, or other designated agent. Service Provider shall promptly remit to Pace any overpayments identified as a result of inspection and audit.

ARTICLE VII

THIRD PARTY PROVIDERS

Section 7.1. Requirements. "Third Party Providers" as used in this Agreement are any other parties who, pursuant to contract or agreement with the Service Provider, directly provide a significant part of the Transportation Services. Service Providers using Third Party Providers to provide the service shall follow the procedures in the Pace Paratransit Manual for obtaining and utilizing such providers. All service provided by a Third Party Provider to a Service Provider shall be competitively solicited at least once every four years and as frequently as once a year if required by Pace. Contracts with Third Party Providers shall be

made in accordance with applicable laws. All such agreements shall be in writing with a copy provided to Pace. Submission of the third party agreement to Pace does not release the Service Provider from any obligation under this Agreement, nor operate as a waiver of any rights of Pace under this Agreement. The Service Provider shall cause each of its Third Party Providers to comply with all applicable provisions of this Agreement and the Pace Paratransit Manual as if the name of the Third Party Provider has been substituted for the name of the Service Provider therein. In the event that Pace Equipment is to be used by a Third Party Provider, such Third Party Provider shall execute a written sublease in a form approved by Pace prior to the use of Pace Equipment.

ARTICLE VIII

RISK FINANCING PROGRAM AND INSURANCE REQUIREMENTS

Section 8.1. General Requirements. The Service Provider shall be required to comply with the Pace Paratransit Manual for all Vehicles used to provide the Transportation Services whether those Vehicles are owned by Pace, the Service Provider, or a Third Party Provider. Service Provider shall immediately notify Pace of any accidents or incidents.

Section 8.2. Risk Financing Program. All Pace Vehicles used in the provision of Transportation Services pursuant to this Agreement shall be included in Pace's Risk Financing Program. The Pace Risk Financing Program shall provide commercial auto liability coverage to Service Provider and any Third Party provider for any claims of bodily injury, death, or property damage arising directly out of the provision of Transportation Services provided with vehicles owned by Pace as described in this Agreement, within the scope of Pace's Self-Insured Retention and up to the liability limits of such excess insurance that Pace may purchase, *subject to the following terms, conditions, and exclusions:*

- (a) Pace specifically excludes from insurance coverage afforded to Service Provider and Third Party Provider herein any claims, actions, damages arising as the result of willful and wanton, reckless, or intentional conduct of Service Provider and/or Third Party Provider, its officers, agents, employees, contractors, sub-contractors, agents or volunteers.
- (b) Pace specifically excludes from insurance coverage afforded to Service Provider and Third Party Provider herein claims of injury or death brought directly or indirectly

against Pace, the Service Provider, or the Third Party Provider by any employee of the Service Provider, the Third-Party Provider, or any contractors or sub-contractors of the Service Provider or Third Party Provider arising out of or in connection with the Transportation Services described in this Agreement.

- (c) The policies of excess insurance purchased by Pace and Pace's Self-Insured Retention shall be primary over insurance carried by the Service Provider or its Third Party Provider for claims within the scope of Pace's Risk Financing Program. Any insurance or self insurance maintained by Service Provider and Third Party Provider shall be in excess of Pace's Self Insured Retention and the policies of excess insurance purchased by Pace, without right of contribution, for claims within the scope of Pace's Risk Financing Program.
- (d) The Service Provider and its third party provider shall be named as additional insureds in all policies of excess insurance for auto liability coverage purchased by Pace above its self-insured retention.
- (e) Service Provider and/or Third Party Provider shall provide immediate *written* notice of any and all accidents, incidents, claims, and lawsuits to Pace, in the form provided in accordance with the provisions of the Pace Paratransit Manual, including promptly updating Pace in writing when a previously reported incident or accident results in a claim or lawsuit, or a previously reported claim results in a lawsuit.
- (f) With respect to any lawsuit that is within the scope of coverage afforded by this Section 8.2, Pace shall have the right and duty to defend the Service Provider and/or Third-Party Provider, including the right to select defense counsel and control the defense of such lawsuit. In the event of any conflict of interest that would prevent Pace from controlling such defense or that would require Pace to allow the Service Provider or Third Party Provider to select independent defense counsel, Pace will reimburse the reasonable attorneys fees and expenses incurred in such defense by the Service Provider or Third Party Provider, provided however that the hourly rates of such counsel shall not exceed the hourly rates ordinarily paid by Pace to its outside counsel for defense of similar types of lawsuits. Pace shall not have any duty to defend the Service Provider or Third-Party Provider for any claims that are excluded from the coverage of this section, including any claims within the scope of

subparagraphs (a) or (b). If a lawsuit includes claims that are both covered and not covered by this Section 8.2, Pace's duty to defend only extends to those portions of the suit that are within the scope of coverage of Section 8.2, and not to any excluded claims. Pace's duty to defend under this paragraph shall cease if and when the limits of auto liability coverage are exhausted of any excess insurance policies purchased by Pace.

(g) Service Provider shall, and shall require its employees, subcontractors and any Third Party Provider, to cooperate with and assist Pace and any claims service agencies, investigators and attorneys employed by or on behalf of Pace in the administration, investigation and defense of any and all claims for bodily injury or property damage, or physical damage to any Pace vehicle asserted against Pace or Service Provider arising out of the provision of Transportation Services pursuant to this Agreement.

(h) The Service Provider's, its subcontractor's or its third party provider's failure to comply with the requirements of this Section shall relieve Pace of any and all obligations that Pace may have under this Article VIII.

Section 8.3. Loss Prevention. Service Provider shall, upon written notice from Pace specifying and documenting claims or other evidence of incompetence, inattention, carelessness or other fault on the part of Service Provider or any of Service Provider's employees, promptly take all lawful and reasonable steps to prevent claims or losses as a result of such incompetence, inattention, carelessness or other fault. This Section shall not, however, be construed to require Service Provider to take any action in violation of its obligations under any labor agreement or other employment contract.

Section 8.4. Requirements for non-Pace Vehicles. Claims arising from non-Pace owned Vehicles are not within the scope of the Pace Risk Financing Program. The Service Provider shall provide the following liability insurance coverage for all claims arising out of non-Pace owned Vehicles used in providing the Transportation Services:

(1) For all taxicabs; a \$350,000 Limit of coverage for Automobile Liability including a Limit of \$350,000 for Uninsured and Underinsured Motorists coverage, and

(2) for all other vehicles; commercial Automobile Liability Insurance Coverage with a minimum Combined Single Limit (CSL) of \$5,000,000 Each Occurrence and \$5,000,000 Aggregate and Commercial General Liability Coverage with at least the following limits:

\$5,000,000 General Aggregate
\$5,000,000 Each Occurrence Limit
\$5,000,000 Products/Completed Operations Hazard Aggregate
Limit
\$5,000,000 Personal & Advertising Injury Liability Limit
\$10,000 Medical Expense Limit (Per Person)

Each Insurance Company providing all Pace required coverage must have a minimum A.M. Best rating of A- VII using the most current data available from A.M. Best Property/Casualty Rating Company.

Contractor, Third Party Provider or any subcontractor shall name Pace Suburban Bus Service as additional insured in its liability policies, as set forth below, and agrees to waive and will require its insurers to waive all rights against the other party, as relates to this Agreement on all of the insurance coverage required under this Agreement.

The insurance policies shall be endorsed to provide that the Suburban Bus Division of the Regional Transportation Authority d/b/a Pace, and the Regional Transportation Authority and their employees are named as additional insured for "liability for 'bodily injury', 'property damage', and 'personal injury' caused in whole or in part, by our acts or omissions or the acts or omissions of those acting on our behalf: (a) in the performance of our ongoing operations; or (b) for claims brought on behalf of our employees, agents, or subcontractors and their employees," in a form providing no less coverage than that provided by the Insurance Service Office's Owners, Lessees or Contractors - Form B [ISO 20 10], on a primary basis, without right of contribution from Pace, for any liability arising from the operation of non-Pace owned vehicles. The coverage shall contain no special limitations on the scope of its protection to the above listed insureds.

The Contractor's insurance must contain the standard Separation of Insureds provision or an endorsement providing that, except with respect to limits, the insurance applies separately to each insured.

The Contractor and any subcontractors shall provide that there will be no recourse against Pace Suburban Bus Service as additional insured for the payment of premiums, additional premiums or assessments, it being understood that these are obligations of the party providing such insurance pursuant to this Agreement.

The Contractor's insurance shall be primary over any other insurance carried by Pace, including self-insurance. In the event the policies should be changed or canceled, said change or cancellation shall not be effective until 30 days after Pace has received notice of such change or cancellation from the Insurance Company.

The Service Provider shall comply with all accident and incident notification and reporting requirements provided for in the Pace Paratransit Manual including Chapter 5 on accident incident reporting and Chapter 6 on personnel standards and rules including drug/alcohol testing requirements.

ARTICLE IX

INDEMNIFICATION

Section 9.1 General. To the fullest extent permitted by law and within the limits of Pace's self insured retention and the excess/umbrella auto liability insurance policies purchased by Pace, Pace shall indemnify and hold harmless Service Provider and its third party provider, their officers, agents, and employees from and against any and all auto liability claims, suits, losses, damages and expenses, which may arise out of the operation of transportation services provided with Pace owned vehicles pursuant to the 2017 Paratransit Service Provider Agreement, provided that Service Provider and its third party provider comply with the notice and cooperation requirements stated in Section 8.2 above, regardless of whether or not it is caused in whole or in part by any negligent act or omission of Service Provider or its Third Party Provider, their officers, agents or employees. This indemnification does not extend to willful and wanton, reckless or intentional conduct of the Service Provider or Third Party Provider and is specifically excluded from this indemnification and insurance coverage, including self-insurance.

Service Provider and its Third Party Provider shall indemnify, hold harmless, and defend Pace and the Regional Transportation Authority, their board members, officers, employees,

agents and attorneys from and against (a) all auto liability claims, suits, losses, damages and expenses, which may arise out of the operation of transportation services provided with non owned Pace vehicles in providing services pursuant to the 2017 Paratransit Service Provider Agreement; (b) any claims, suits, actions, damages which arise out of the willful and wanton, reckless or intentional acts of the Service Provider or its Third Party Provider in the performance of this agreement; and (c) claims brought directly or indirectly against Pace by an employee of the Service Provider, or an employee of Service Provider's contractors or sub-contractors (Third Party Provider), or arising out of any injury or death of Service Provider's employee, or an employee of Service Provider's contractors or subcontractors (Third Party Provider), in connection with the Transportation Services described in this Agreement..

The indemnities contained in this Section shall survive termination of this Agreement.

Section 9.2. Service Provider's Damages. Except as expressly provided in Article VIII or Article IX of this Agreement, Pace shall not be responsible to Service Provider or to any of its officers, employees, agents or attorneys for any loss of business or other damage caused by an interruption of the Transportation Services, or for the time lost in repairing or replacing any Pace Equipment, or for any loss, injury, or damage arising out of or relating to Pace's failure to deliver Pace Equipment, or for any other losses or damages sustained by the Service Provider hereunder. Except as expressly provided in Article VIII or Article IX of this Agreement, Pace assumes no liability or responsibility for any acts or omissions of Service Provider, or of Service Provider's officers, employees, agents or attorneys, or for any property of Service Provider or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of this Agreement.

ARTICLE X

PAYMENT, BUDGET AND ACCOUNTING

Section 10.1. Maximum Service Reimbursement Amount. Pace hereby agrees to pay the Service Provider a service reimbursement in an amount as limited by the Approved Budget and further limited by (i) the Paratransit Service Reimbursement Guidelines shown in Exhibit C and (ii) the other provisions of this Article X. Pace may change the Paratransit Service Reimbursement Guidelines of the Paratransit Program and/or level of fares and such new guidelines and fare shall be used to determine Pace's maximum reimbursement obligation. If the Pace Board revises the Paratransit Reimbursement Guidelines during the term of this

Agreement, then such new guidelines shall be effective for the remainder of the Agreement Term subject only to a sixty day notice period during which time the old guidelines would remain in effect.

Section 10.2. Payment of Reimbursement. Pace shall make monthly payment installments of the service reimbursement based on the receipt of a properly prepared Monthly Report and related required documentation. During January and February, the monthly installments shall be one-twelfth of the Service Reimbursement Amount in accordance with the Approved Budget. Each of the remaining monthly payment installments shall be based on the Monthly Report for the month that is two months prior to the month during which the report is submitted and payment is due. Such material must be received by Pace by the close of business on the day specified in the Pace Paratransit Manual in order to be processed and paid during the submitted month. Any late or improperly prepared submissions shall not be considered for payment until the next month. After all Monthly Reports have been received for the Agreement Term, a final calculation of the service reimbursement amount shall be made. If a credit is due to either party, such party shall pay the amount of such credit to the other party within 30 days following demand therefore.

Section 10.3. Limitations on Payments. In addition to any other remedy provided herein, if Service Provider materially fails to comply with any term of this Agreement, or fails to take corrective action as directed by Pace, Pace may withhold payments pending Service Provider's actions to achieve compliance or take corrective action.

Notwithstanding any other provision of this Article, no payment of the Service Reimbursement Amount, or any installment thereof, shall be due, owing or made in violation of any of the following limitations:

- (1) No monthly installment due in any month shall be paid unless the Reports required pursuant to the Pace Paratransit Manual have been filed with Pace in accordance with said Section.
- (2) No payment shall be made if Pace should find or has reason to believe that the Monthly Reports have not been prepared in accordance with sound financial and management practices. Pace shall withhold payment until such issues are resolved.
- (3) Payments shall not exceed the Approved Maximum Service Reimbursement Amount. Any payments made after January 1, 2020 pursuant to any prior reimbursement agreement between the parties whose term extended into calendar year 2018 shall be deemed to be payments made under this Agreement with the exception of payments due for service provided prior to January 1, 2020.
- (4) No payment shall be made with respect to any Operating Expenditure incurred or accrued in violation of this Agreement or any provision of the Pace Paratransit Manual.

Section 10.4. Funding Availability. Notwithstanding anything to the contrary, including in particular (but not limited to the provisions of Section 10.1), it is expressly agreed that the obligation of Pace to pay the Service Reimbursement Amount shall be limited to the availability of funds from Pace's revenues and budget for Pace's fiscal year so that in the event Pace determines that funds are not available, Pace's obligations to pay any such unpaid part or parts of the Service Reimbursement Amount shall be terminated forthwith and Pace shall have no further obligations to make any payments to Service Provider under the Agreement. In the event that Pace determines that no funds will be available to pay the Service Reimbursement Amount, the Service Provider shall be given written notice thereof in accordance with Section 11.2.

Section 10.5. Transportation Revenue. All Transportation Revenue shall be the property of the Service Provider. Service Provider shall comply with Pace policies, practices and procedures relating to the collection, security, and accounting of all Transportation Revenue as set forth in the Pace Paratransit Manual. Should the Service Provider decide to allow any passengers to travel at less than the minimum fares for paratransit established by the Pace Board, then the difference between the minimum Pace fare and fares charged shall be funded by the Service Provider and such funds shall be considered Transportation Revenue.

Section 10.6. Accounting and Reporting Standards. Service Provider shall maintain its books and records, and shall prepare, maintain and file reports, relating to this Agreement and the Transportation Services in accordance with generally accepted governmental accounting principles, Section 15 of the United States Urban Mass Transit Act, the Pace Paratransit Manual, the Approved Budget and any documentation submitted by Service Provider, and approved by Pace, in support of the Approved Budget. In case of any conflict in the aforesaid standards, Service Provider shall seek specific direction from Pace and, pending receipt of such direction, shall comply with that standard that most fairly, accurately and completely records and reports the results of operations.

Section 10.7. Budget Amendments. Pace shall have no obligation to revise the Approved Budget or to increase the Approved Maximum Service Reimbursement Amount or any Line Item Budget Maximum.

Section 10.8. Capital Expenditures. Pace is not obligated to provide any grant funds to the Service Provider for capital purchases. Any Capital Asset paid for with the proceeds of any payment made by Pace shall be the property of Pace and shall be added to Exhibit B or to the inventory of Pace Equipment required pursuant to Subsection 3.1B and shall be returned to Pace at the end of the Agreement Term.

Section 10.9. Subsequent Service Reimbursement. In order to permit Pace to evaluate the merits of entering into a new service reimbursement agreement for Transportation Services with Service Provider following the end of the Agreement Term, Service Provider shall, during the Agreement Term and pursuant to this Section, cooperate with Pace to develop a proposed budget for the calendar year following the Agreement Term. On or before July 1 of the Agreement Term, or such other date as Pace may specify in a service reimbursement application solicitation request, Service Provider shall submit its formal Service Provider application to Pace in the format specified by Pace. Nothing in this Section shall, however, obligate either Pace or Service Provider to agree to any reimbursement estimate or to enter into any new agreement.

ARTICLE XI

TERM

Section 11.1. Term. The term of this Agreement shall be one year commencing on the 1st day of January, 2020, and terminating after the last scheduled service on the 31st day of December, 2020.

Section 11.2. Termination for Impossibility of Performance. This Agreement may be terminated, in whole or in part, upon seven days written notice given by Pace to Service Provider in the event that the Illinois General Assembly, the Regional Transportation Authority or any funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of Pace, to cover payments to be made to Service Provider pursuant to Article X hereof, or if any Vehicle(s) necessary to perform the Transportation Services hereunder (are) is unavailable for any reason, as determined in the sole discretion of Pace.

The termination of this Agreement shall not be in any manner prevented or affected by the fact that Service Provider may have already partially or fully performed its obligations under this Agreement in respect to any unpaid part or parts of this Agreement by the time it is determined by Pace that it will be unable to pay the remaining unpaid part or parts of this Agreement.

Section 11.3 Termination for Service Provider Default

A. **Immediate Termination.** This Agreement shall be terminated, and the Agreement Term shall end, 24 hours after written notice of such termination given by Pace to Service Provider in the event that Service Provider shall, for any reason, other than as specified in Section 2.2 of this Agreement, cancel, eliminate or reduce or diminish service without prior written approval from Pace.

B. Termination Following Failure To Cure. This Agreement shall be terminated, and the Agreement Term shall end, if the Service Provider violates any other material obligation under this Agreement or fails to timely perform any other material obligation under this Agreement and such violation or failure shall continue for a period of 21 days after Service Provider receives written notice from Pace describing in reasonable detail the nature of the violation or failure; provided, however, that in the event such violation or failure cannot be cured within said 21 day period notwithstanding diligent and continuous effort by Service Provider and Service Provider shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as Pace may determine to be necessary for curing such violation with diligence and continuity.

C. Obligations Following Termination. Pace's obligations upon termination of this Agreement in any manner and for any purpose authorized by this Article XI shall be limited to payment of reimbursement obligations for services rendered by Service Provider up to the date of said termination. Immediately upon termination of this Agreement in any manner and for any purpose, Service Provider shall comply with the provisions of Section 11.4 below. In addition, Service Provider shall be liable to Pace for all damages incurred as a result of any violation or failure that leads to termination of this Agreement. Said damages shall include, but shall not be limited to, all court costs, and attorneys' fees and disbursements incurred in connection with enforcing or defending Pace's rights hereunder.

Section 11.4. Return of Pace Equipment and Records Upon Termination. Immediately following the Agreement Term, Service Provider shall surrender and deliver to Pace at such time or times and at such location or locations within the six-county region as Pace may designate:

- (1) All Pace Vehicles and Other Pace Equipment in good operating order, repair and condition, reasonable wear and tear and normal depreciation excepted; and
- (2) All records pertaining to all Pace Vehicles and Other Pace Equipment, including, without limitation, all preventative maintenance reports and vehicle repair reports.

Pace shall have the right to inspect the premises of the Service Provider and to remove any Pace Equipment or any such records that remain in the possession of Service Provider. Pace, in its sole discretion, shall determine the condition of surrendered and returned Pace Equipment and the extent of any wear and tear, depreciation or damage. Service Provider shall make, or cause to be made, any and all repairs deemed necessary by Pace to place the surrendered and returned Pace Equipment in the condition required by Sections 3.1 and

3.2 of this Agreement. Such repairs shall be completed within 21 days following Pace's written demand that they be undertaken. If any such repairs are the result of Service Provider's failure to comply with the provisions of this Agreement, the cost thereof shall not be reimbursable by Pace under this Agreement. If Service Provider fails to make such repairs, then Pace shall have such repairs performed and Service Provider shall reimburse Pace for the cost of such repairs within 30 days after a receipt for such costs is provided to Service Provider.

ARTICLE XII

COVENANTS AND REPRESENTATIONS

Section 12.1. General. Service Provider hereby makes the covenants and representations with and to Pace as described in this Article and hereby agrees to abide by each and every one of them.

Section 12.2. Corporate Existence and Power. Service Provider is duly organized, validly existing and in good standing under the laws of the State of Illinois, and has the legal power and authority to enter into this Agreement and to provide, engage in and carry out the Transportation Services. Service Provider shall maintain its corporate identity and shall make no attempt to cause its corporate existence to be abolished during the Agreement Term.

Section 12.3. Authorization. Service Provider has been duly authorized to execute this Agreement by its corporate authorities by ordinance duly adopted, and the execution and delivery of this Agreement by all of the parties signatory hereto shall constitute a valid and binding obligation of Service Provider, enforceable in accordance with its terms, and the making of and compliance by Service Provider with the terms and conditions of this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture or other instrument applicable to Service Provider.

Section 12.4. Approvals Received. All such approvals, consents, permits, licenses, authorizations, or modifications as may be required to permit the performance by Service Provider of its obligations under this Agreement have been obtained from the appropriate governmental authorities or other persons or entities.

Section 12.5. No Material Litigation. No litigation, investigation or proceeding of or before any court, governmental authority or arbitrator is pending or, to the knowledge of Service Provider, threatened by or against Service Provider, or against any of its properties or revenues (1) with respect to this Agreement, or (2) which is reasonably likely to have a material adverse effect on the operations, property or financial condition of Service Provider.

Section 12.6. No Default. Service Provider is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property or financial condition of Service Provider or that is reasonably likely to materially adversely affect the ability of Service Provider to perform its obligations under this Agreement.

Section 12.7. No Burdensome Restrictions. No obligation of Service Provider and no requirement of law materially adversely affects, or insofar as Service Provider Agency may reasonably foresee may so affect, the business, operations, property or financial condition of Service Provider or the ability of Service Provider to perform its obligations under this Agreement.

Section 12.8. No Sale, Lease or Encumbrance. Service Provider will not sell, lease, loan, or in any manner dispose of any Pace Equipment during the Agreement Term.

Section 12.9. Payment of Obligations. Service Provider shall pay and discharge all of its obligations and indebtednesses with respect to the Transportation Services and with respect to the Service Provider Vehicles, if any; provided, however, that any such obligation or indebtedness need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if Service Provider shall have set aside on its books adequate reserves with respect thereto, except that all such obligations and indebtednesses shall be paid forthwith upon an adverse decision in such proceedings and the exhaustion of available appellate relief with respect thereto.

Section 12.10. Compliance With Applicable Laws. Service Provider shall comply with all federal, state and local statutes, laws, rules, regulations and orders applicable to the Transportation Services.

Section 12.11. Compliance With Agreement Conditions. Service Provider shall comply with all conditions of, and all laws and regulations and all Pace policies, practices and procedures applicable to, any federal, state or local grant received by Pace or by Service Provider at any time with respect to the Transportation Services or the Equipment, including the Pace Paratransit Manual.

Section 12.12. No Bar From Public Contracts. Service Provider warrants and represents that the statements contained in the Service Provider=s Certification in Exhibit F hereto are true and correct.

Section 12.13. Opinion of Counsel. Service Provider shall provide to Pace, at or before the time Service Provider executes this Agreement, an opinion of an attorney licensed to practice law in the State of Illinois in the form provided in Exhibit G.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Complete Agreement. This Agreement, including the Exhibits hereto and the Pace Paratransit Manual, constitutes the entire Agreement between the parties hereto, except as it may be amended as provided by this Article.

Section 13.2. Exhibits; Pace Paratransit Manual; Conflicts. Exhibits A through G attached to this Agreement and the Pace Paratransit Manual (as such Manual may be amended from time to time and as supplemented with Pace directives) are incorporated herein and made a part hereof by this reference. In case of any conflict among the provisions of this Agreement, including the Exhibits hereto and the Pace Paratransit Manual, that provision which, in the opinion of Pace, best promotes safe, efficient and economical transportation service and best protects the Equipment shall control.

Section 13.3. Amendments. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the authorized representatives of the parties hereto.

Section 13.4. Notices. All notices and other communications in connection with this Agreement shall be in writing, and any notice or other communication hereunder shall be deemed received by the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to Pace as follows:

Attention: Executive Director
Pace Suburban Bus
550 W. Algonquin Road
Arlington Heights, IL 60005-4412

Notices and communications to Service Provider shall be addressed as shown on the cover page to this Agreement. By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section 13.5. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving or receiving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal or State of Illinois holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal or State

of Illinois holiday. Any reference herein to time of day shall refer to local time for Arlington Heights, Illinois.

Section 13.6. Singular and Plural. The use of the singular or the plural herein shall be construed to be the plural or singular as the context requires.

Section 13.7. Governing Laws. This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Illinois.

Section 13.8. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules or regulations shall include such laws, ordinances, rules or regulations as they may be amended or modified from time to time.

Section 13.9. No Assignment. Service Provider shall not assign either its rights or its obligations under this Agreement without the prior written consent of Pace, which consent may be granted or withheld at the sole discretion of Pace. Any attempted or purported assignment of such rights or obligations without the prior written consent of Pace shall be void and of no effect. Any successor to Service Provider's rights under this Agreement shall be bound by, and shall comply with, all of the provisions, conditions and requirements of this Agreement.

Section 13.10. Headings. The section headings of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the scope or intent of this Agreement or the intent of any provision hereof.

Section 13.11. Prohibited Interests. No member of the Illinois General Assembly, no member of the Congress of the United States and no director or employee of Pace or of Service Provider shall, during his or her tenure or for one year thereafter, have any interest, direct or indirect, in this Agreement or be admitted to any share or part of this Agreement or to any benefit arising there from or any proceeds thereof.

Section 13.12. Independent Contractor. In the performance of the Transportation Services and Other Services pursuant to this Agreement, Service Provider is an independent contractor with the authority to control and direct the performance of the details of the Transportation Services and Other Services to be performed pursuant to this Agreement. All personnel necessary for Service Provider's performance pursuant to this Agreement shall be employees of Service Provider or of Service Provider's subcontractors. None of the said personnel shall be deemed for any purpose to be employees, agents or representatives of Pace.

Section 13.13. Litigation Against Service Provider. If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against Service Provider or any subcontractor of Service Provider, before any court, commission, board, bureau, agency, unit of government

or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of Service Provider to perform its obligations under, or otherwise to comply with, this Agreement, Service Provider shall promptly deliver a copy of the complaint or charge related thereto to Pace and shall thereafter keep Pace fully informed concerning all aspects of such lawsuit or proceeding.

Section 13.14. Non-Waiver. Pace shall not be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by an authorized officer or director of Pace. No delay or omission by Pace in exercising any right under this Agreement shall operate as a waiver of such right or any other right by Pace. All the rights and remedies of Pace under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently by Pace. The waiver or exercise of any remedy by Pace shall not be construed as a waiver of any other remedy available under this Agreement or under general principles of law or equity.

Section 13.15. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 13.16. Survival Clause. If any provision of this Agreement is construed or held to be void, invalid or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

Section 13.17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 13.18. Other Agreements Not Prohibited. Nothing in this Agreement shall be deemed to prohibit Pace from entering into additional or alternative agreements or arrangements to provide replacement, additional, supplementary or duplicative service in the area served by Service Provider.

Section 13.19. No Future Obligations. Nothing in this Agreement or the parties' performance thereof shall be construed to create any obligation to renew this Agreement after the Agreement Term or to enter into any other agreement of any kind or nature.

ARTICLE XIV

REMEDIES

Section 14.1. Remedies. In addition to Pace's right to terminate this Agreement pursuant to Article XI and any other rights otherwise provided in this Agreement, in the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement. Any cost or expense

associated with pursuing any such remedy shall not be an Operating Expenditure under this Agreement.

Section 14.2. Notice and Cure. Neither party may exercise the right to bring any suit, action, mandamus or any other proceeding pursuant to Section 14.1 of this Agreement without first providing written notice to the other party of the breach or alleged breach and allowing a period of 15 days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said 15 day period notwithstanding diligent and continuous effort by the party receiving notice and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

SERVICE PROVIDER

PACE

By: _____

By _____

Rocco L. Donahue, Executive Director

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT

PROPOSED 2020 BUDGET

PROJECT: **VILLAGE OF TINLEY PARK**

REVENUE	\$ <u>7,629</u>
EXPENSES	
OPERATIONS	\$ <u>72,023</u>
MAINTENANCE	\$ <u>3,066</u>
ADMINISTRATION	\$ <u>4,571</u>
TOTAL EXPENSE	\$ <u>79,660</u>
OPERATING DEFICIT	\$ <u>72,031</u>
PACE SUBSIDY	\$ <u>17,448</u>
LOCAL SHARE	\$ <u>54,583</u>
RIDERSHIP	5,816
VEHICLE HOURS	1,324

Exhibit C

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT

PARATRANSIT REIMBURSEMENT GUIDELINES

The maximum Service Reimbursement shall be the lesser of the amounts calculated in each of the following way:

1. 75% of the projected Operating Deficit in the Approved Budget; or
2. 75% of the actual Operating Deficit; or
3. 3.00 multiplied by the number of annual one-way passenger trips not to exceed the maximum number of trips in the Approved Budget.

The Approved Budget shall be the maximum estimated expenses, deficit, hours of service, and ridership upon which Pace's maximum Service Reimbursement amount will be calculated.

The total of the year to date subsidy payments shall not exceed an amount equal to 1/12th of the annual budgeted subsidy times the number of months elapsed in the year.

Exhibit D

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT TRANSPORTATION SERVICES FUNDED BY PACE

VILLAGE OF TINLEY PARK

TYPE OF SERVICE	Dial-A-Ride Bus Service
SERVICE OPERATED BY	Village of Tinley Park
TRIP RESERVATION METHOD	24 hours in advance
SERVICE AREA	Village of Tinley Park
SERVICE HOURS	Monday through Friday 9:00 a.m. to 2:00 p.m.
HOLIDAYS	Service will <u>not</u> operate on the following holidays: <ul style="list-style-type: none">➤ New Year's Day➤ Presidents' Day➤ Good Friday➤ Memorial Day➤ Independence Day (observed Holiday)➤ Labor Day➤ Thanksgiving Day➤ Day after Thanksgiving➤ ½ - Day Christmas Eve➤ Christmas Day➤ ½ -Day New Year's Eve
ONE-WAY FARE	Persons (age 55-64) \$1.30 Persons (65+) \$.65 Disabled \$.65
RIDER ELIGIBILITY	Persons age 55+ and persons with disabilities

Exhibit E

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT

AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY AND DISADVANTAGED BUSINESS ENTERPRISES

- A. **Affirmative Action.** Service Provider shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability or an unfavorable discharge from military service. Such action shall include, but not be limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment advertising, layoff of termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Prior to the execution of this Agreement, Service Provider shall furnish Pace with evidence that it has filed with the Illinois Department of Human Rights (the "Department") an affirmative action program covering the Service Provider's employment practices, if a plan is required by the Department. Service Provider shall promptly furnish Pace with a copy of any and all documents filed by it with the Department.
- B. **Equal Employment Opportunity Clause.** Service Provider shall comply with the following provisions, collectively referred to as the "Equal Employment Opportunity Clause".
- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, and national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
 - (2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Department's Rules and Regulations for Public Contracts) of minorities and Women in the area(s) from which it may reasonably recruit and it will hire persons in such a way that minorities and women are not underutilized.
 - (3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 - (4) That it will send a notice to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding advising such labor organization or representative of its obligation under the Illinois Human Rights Act and the Department's Rules and Regulations

for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with Service Provider in its efforts to comply with such Act and Rules and Regulation, Service Provider shall promptly so notify the Department, and Service Provider shall recruit employees for other sources when necessary to fulfill its obligations thereunder.

(5) That it will submit reports as required by the Department's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Department of Pace, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.

(6) That it will permit access by Pace and the Department to all relevant books, Records, accounts, and work sites for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.

C. Subcontracts. Service Provider shall insert the following provisions in all subcontracts relating to the provision of Transportation Services and Other Service except subcontracts for standard commercial supplies or raw materials:

"No discrimination shall be made in any term or aspect of employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, or political reasons or factors.

In addition, Service Provider shall insert verbatim or by reference the provisions of the Equal Employment Opportunity Clause in every performance subcontract as defined in Section 1.1(17) (b) of the Department's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Agreement, Service Provider will be liable for compliance by all its subcontractors with applicable provisions of this Section; and further it will promptly notify pace and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Service Provider will not utilize any subcontractor declared by the Department to be non-responsible and, therefore, ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

D. Disadvantaged Business Enterprises. Service Provider shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Service Provider shall carry out application requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by Service Provider to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such remedy as Pace deems appropriate.

Exhibit F

2020 PARATRANSIT SERVICE PROVIDER AGREEMENT

SERVICE PROVIDER'S CERTIFICATION

STATE OF ILLINOIS)
)
COUNTY OF _____) SUBURB-TO-SUBURB.

, being first duly sworn on oath, deposes and state that all statements herein made are made on behalf of the Service Provider; that this deponent is authorized to make them, and that the statements contained herein are true and correct.

The Service Provider deposes, states and certifies that the Service Provider is not barred from contracting with Pace on the Paratransit Service Provider Agreement as a result of a violation of either Section 33E-3 of Section 33E-4 of Article 33E of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 33E-4).

DATED: _____

SERVICE PROVIDER

By: _____

Title: _____

Attest: _____

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2019.

NOTARY PUBLIC

**PUBLIC
COMMENT**

ADJOURNMENT