

MEMBERSHIP AGREEMENT FOR A GEOGRAPHIC
INFORMATION SYSTEM CONSORTIUM

This Agreement is entered into this 7th day of August, 2017, by and between the municipalities that have executed this Agreement pursuant to its terms (all municipalities are collectively referred to as “Parties”).

W I T N E S S E T H:

WHEREAS, Section 10 of Article VII of the Illinois Constitution of 1970 and Section 3 of the Illinois Intergovernmental Cooperation Act authorize and encourage the entering into of Intergovernmental Agreements between units of local government;

WHEREAS, the Parties desire to enter into an Intergovernmental Agreement setting forth the responsibilities of the Parties with regard to the operation of a consortium to develop and share geographic information system information;

WHEREAS, the Parties desire to limit the cost of developing geographic information systems for their communities by participating in group training, joint purchasing and development and innovation sharing;

NOW, THEREFORE, in consideration of the mutual covenants of this Agreement and other good and valuable consideration, the Parties agree as follows:

I. General Purpose

The general purpose of this Agreement is to provide for an organization through which the Parties may jointly and cooperatively procure professional services for the establishment,

operation and maintenance of a geographic information system for the use and benefit of the Parties.

II. Construction and Definitions

Section 1. The language in the text of this Agreement shall be interpreted in accordance with the following rules of construction:

- (a) The singular number includes the plural number and the plural the singular,
- (b) The word “shall” is mandatory; the word “may” is permissive; and
- (c) The masculine gender includes the feminine and neuter

Section 2. When the following words and phrases are used, they shall, for the purposes of this Agreement, have the meanings respectively ascribed to them in this Section, except when the context otherwise indicates.

- (a) “GEOGRAPHIC INFORMATION SYSTEM CONSORTIUM” or “GISCon” means the organization created pursuant to this Agreement.
- (b) “GIS,” means geographic information system.
- (c) “BOARD” means the Board of Directors of GISCon, consisting of one (1) Director (and one (1) alternate Director) from each governmental unit, which is a member of GISCon.
- (d) “CORPORATE AUTHORITIES” means the governing body of the member governmental unit.
- (e) “MEMBER” means a Governmental Unit, which enters into this Agreement and is, at any specific time not in default as set forth in this Agreement.
- (f) “FORMER MEMBER” means any entity, which was once a Member, but has either withdrawn from GISCon or whose membership was terminated pursuant to this Agreement.
- (g) “UNIT OF LOCAL GOVERNMENT” or “GOVERNMENTAL UNIT” means and includes any political subdivision of the State of Illinois or any department or agency of the state government or any city, village or any taxing body.

- (h) “SOFTWARE” means computer programs, form designs, user manuals, data specifications and associated documentation.
- (i) “SERVICE PROVIDER” means any professional services firm(s) that GISCon designates as the firm(s) to establish, operate, maintain or support geographic information systems, for the Members.
- (j) “SECONDARY SERVICE PROVIDER” means a Service Provider not limited to a supplier of software, hardware, mapping or other services.
- (k) “INTELLECTUAL PROPERTY” means any and all software, data or maps generated by or for GISCon. Such intellectual property shall be considered privileged and confidential trade secrets and shall constitute valuable formulae, design and research data or which Members have given substantial consideration.

III. Membership

Section 1. Any Governmental Unit may be eligible to become a member of GISCon.

Section 2. A Governmental Unit desiring to be a member shall execute a counterpart of this Agreement and shall pay initial membership dues of a minimum of Four Thousand Dollars (\$4,000) and a maximum of Twenty Thousand Dollars (\$20,000) to be pro-rated in accordance with the formula contained in Exhibit A. Payment shall be made to the Treasurer of GISCon to offset the cost of the legal and administrative expenses of the formation, operation and administration of GISCon.

Section 3. Members shall enter into a GIS service contract, with the Service Provider substantially conforming with the agreement attached in Exhibit B or as modified by the GISCon Board, within one (1) year of signing this Agreement. Members are expected to enter into any agreements with Secondary Service Providers deemed necessary for the functioning of GISCon within a reasonable time as determined by the Board of Directors. Members shall be subject to the provisions of this Agreement, including but not limited to Article XIV.

Section 4. Any Governmental Unit desiring to enter into this Agreement may do so by the duly authorized execution of a counterpart of this Agreement by its proper officers. Thereupon, the clerk or other corresponding officer of the Governmental Unit shall file a duly executed copy

of the Agreement, together with a certified copy of the authorizing resolution or other action, with the GISCon President. The resolution authorizing the execution of the Agreement shall also designate the first Director and alternate for the Member.

Section 5. The Charter Members shall be the Members consisting of Glencoe, Highland Park, Lincolnshire and Park Ridge.

Section 6. Any Member joining GISCon agrees, upon joining, that if it is to become a Former Member, it will be bound by all of the obligations of a Former Member as set forth in this Agreement.

Section 7. Former members will require a two-thirds (2/3) majority Member vote in order to rejoin the Consortium.

IV. Board of Directors

Section 1. The governing body of GISCon shall be its Board of Directors. Each Member shall be entitled to one (1) Director, who shall have one (1) vote.

Section 2. Each Member shall also be entitled to one alternate Director who shall be entitled to attend meetings of the Board and who may vote in the absence of the Member's Director.

Section 3. The Corporate Authorities of each Member shall appoint Directors and alternate Directors. In order for GISCon to develop data processing and management information systems of maximum value to Member Governmental Units, the Members shall appoint, as their Directors and alternates, a chief administrative officer, a department head and employees with significant management responsibility and experience. Directors and alternates shall serve without compensation from GISCon.

Section 4. A vacancy shall immediately occur in the office of any Director upon his resignation, death or ceasing to be an employee of the Member.

V. Powers and Duties of the Board

Section 1. The powers and duties of the Board shall include the powers set forth in this

Article.

Section 2. It shall take such action, as it deems necessary and appropriate to accomplish the general purposes of the organization in negotiating with a Service Provider to determine annual rates and usage levels for the members and other ancillary powers to administer GISCon.

Section 3. It may establish and collect membership dues.

Section 4. It may establish and collect charges for its services to Members and to others.

Section 5. It may exercise any other power necessary and incidental to the implementation of its powers and duties.

VI. Officers

Section 1. The officers of the Board shall consist of a President, a Vice-President, a Secretary and a Treasurer. Powers and duties are described in the By-Laws.

VII. Financial Matters

Section 1. The fiscal year of GISCon shall be the calendar year.

Section 2. An annual budget for the next fiscal year shall be adopted by the Board at the annual meeting by December 31st of each year. Copies shall be provided to the chief administrative officer of each Member.

Section 3. The Board shall have authority to adjust cost sharing charges for all Members in an amount sufficient to provide the funds required by the budgets of GISCon.

Section 4. Billings for all charges shall be made by the Board and shall be due when rendered. Any Member whose charges have not been paid within 90 days after billing shall be in default and shall not be entitled to further voting privileges or to have its director hold any office on the Board and shall not use any GISCon facilities or programs until such time as such Member is no longer in default. Members in default shall be subject to the provisions within this Agreement. In the event that such charges have not been paid within 90 days of such billing, such defaulting Member shall be deemed to have given, on such 90th day, notice of withdrawal from membership. In the event of a bona fide dispute between the Member and the Board as to

the amount which is due and payable, the member shall nevertheless make such payment in order to preserve its status as a Member, but such payment may be made under protest and without prejudice to its right to dispute the amount of the charge and to pursue any legal remedies available to it. Withdrawal shall not relieve any such Member from its financial obligations as set forth in this Agreement.

Section 5. Nothing contained in this Agreement shall prevent the Board from charging nonmembers for services rendered by GISCon, on such basis, as the Board shall deem appropriate.

Section 6. It is anticipated that certain Members may be in a position to extend special financial assistance to GISCon in the form of grants. The Board may credit any such grants against any charges, which the granting Member would otherwise have to pay. The Board may also enter into an agreement, as a condition to any such grant, that it will credit all or a portion of such grant towards charges, which have been made or in the future may be made against one or more specified Members.

Section 7. The Board, in accordance with procedures established in the By-Laws may expend board funds. The Board must authorize all expenditures by simple majority.

VIII. Termination of Membership

Section 1. Failure to enter into an agreement with the Service Provider within one (1) year of GISCon's designation of the Service Provider shall be cause for the termination of membership. A 30-day written notice will be given to a Member that fails to enter into an agreement with the Service Provider as provided in this Section. Upon the failure to enter into an agreement at the end of the thirty-day (30) notice period, its membership shall be terminated.

Section 2. Failure to enter into an agreement within thirty 30 days of expiration of the previous agreement with Service Provider shall result in membership termination.

Section 3. A member may be terminated for cause based on an affirmative vote of two-thirds (2/3) of the Board of Directors.

Section 4. Upon termination of any Member, the Member shall be responsible for:

- (a) All of its pro-rated share of any obligations;

- (b) Its share of all charges to the effective date of termination; and
- (c) Any contractual obligations it has separately incurred with GISCon or the Service Provider.

Section 5. A Member terminated from membership at a time when such termination does not result in dissolution of GISCon, shall forfeit its claim to any assets of GISCon. Any terminated Member shall be subject to the provisions described elsewhere in this agreement.

IX. Withdrawal

Section 1. Any Member may at any time give written notice of withdrawal from GISCon. The nonpayment of charges as set forth in this Agreement or the refusal or declination of any member to be bound by any obligation to GISCon shall constitute written notice of withdrawal.

- (a) Actual withdrawal shall not take effect for a period of six (6) months from the date of such notification.
- (b) Upon effective withdrawal the withdrawing member shall continue to be responsible for:
 - (i) All of its pro-rated share of any obligations;
 - (ii) Its share of all charges to the effective date of termination;
 - (iii) Any contractual obligations it has separately incurred with GISCon or the Service Provider(s).

Section 2. A Member withdrawing from membership at a time when such withdrawal does not result in dissolution of GISCon shall forfeit its claim to any assets of GISCon. Any Member that withdraws shall be subject to the provisions of this Agreement. In addition, any Member withdrawing shall promptly remove, at its own expense, any and all software, maps or other data that was not developed exclusively for the Member's benefit, except under terms as provided for elsewhere in this Agreement. The withdrawing Member shall, within thirty (30) days of withdrawal, file a certification with the Board, verifying compliance with this Section.

X. Dissolution

Section 1. GISCon shall be dissolved whenever:

- (a) A sufficient number of Members withdraw from GISCon to reduce the total number of Members to less than two (2) or
- (b) By two-thirds (2/3) vote of all Directors.

Section 2. In the event of dissolution, the Board shall determine the procedures necessary to affect the dissolution and shall provide for the taking of such measures as promptly as circumstances permit subject to the provisions of this Agreement.

Section 3. Upon dissolution, after payment of all obligations the remaining assets of GISCon shall be distributed among the then existing Members in proportion to their contributions to GISCon during the entire period of such Member's membership, as determined by the Board. The computer software that GISCon developed for its membership shall be available to the Members, subject to such reasonable rules and regulations, as the Board shall determine.

Section 4. If, upon dissolution, there is an organizational deficit, such deficit shall be charged to and paid by the Members and Former Member in accordance with obligations as described in Article IX on a pro-rata basis, the pro-rata basis is calculated from the Members' contributions to GISCon during the two (2) years preceding the date of the vote to dissolve.

Section 5. In the event of dissolution the following provisions shall govern the distribution of computer software owned by GISCon:

- (a) All such software shall be an asset of GISCon.
- (b) A Member may use any software developed during its membership in accordance with this agreement, upon:
 - (i) Paying any unpaid sums due GISCon,
 - (ii) Paying the costs of taking such software, and
 - (iii) Complying with reasonable rules and regulations of the Board relating to the taking and use of such software. Such rules and regulations may include a reasonable time within which any Member must take such software.

XI. General Conditions

Section 1. Notice. All notices hereunder shall be in writing, and shall be deemed given when delivered in person or by United States certified mail, with return receipt requested, and if mailed, with postage prepaid. All notices shall be addressed as follows:

If to GISCon:

President of GISCon

GIS Consortium
Ashley Engelmann
701 Lee Street, Suite 1020
Des Plaines, IL 60016

With a copy to the GISCon Secretary

GIS Consortium
Michelle Rentzsch
701 Lee Street, Suite 1020
Des Plaines, IL 60016

If to Member:

Village of Arlington Heights
Diana Mikula
33 South Arlington Heights Road
Arlington Heights, IL 60005

Each party shall have the right to designate other addresses for service of notices, provided notice of change of address is duly given.

Section 2. The Parties certify that they are not barred from entering into this Agreement as a result of violations of either Section 33E-3 or Section 33E-4 of the Illinois Criminal Code and that they each have a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A)(4).

XII. Duration

This agreement shall continue in effect indefinitely, until terminated in accordance with its terms or until GISCon is dissolved.

XIII. Member Software Usage

Section 1. No Member or Former Member shall:

- (a) Permit any other parties to use, modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or create derivative works based on the software;
- (b) Copy the software, unless part of normal backup procedures;
- (c) Sell, rent, lease, license, give away or grant a security interest in or otherwise transfer rights to the software; or
- (d) Remove any proprietary notices or labels on the software without written permission from the Board.

Section 2. In the event of default, withdrawal or termination of membership of a Member, that Member may use, under license granted by the Board, any software developed during its membership upon:

- (a) Paying to the Board any unpaid sums due GISCon and
- (b) Paying any reasonable costs established by the Board for licensing such software.

XIV. Service Provider

Section 1. For the purposes of this article, the Service Provider is defined as the Service Provider and Secondary Service Provider.

Section 2. The term of any Service Provider shall be as set forth in the Service Provider Agreement.

Section 3. The Board may at any time by a majority vote name a new Service Provider, whose term shall begin at such time as the Board may authorize.

Section 4. A Service Provider's term shall be renewed upon such terms as the Board may approve.

Section 5. The Board may terminate the services of a Service Provider at any time, subject only to the Service Provider agreement.

Section 6. The Board may enter into agreements with more than one Service Provider if it deems it appropriate to do so.

XV. Intellectual Property

Section 1. Members agree that no assignments, licenses, sales, authorization of reuse by others, giveaways, transfer or any other grant of Intellectual Property rights will be made to any third party without written permission from the Board.

Section 2. It is understood that this Agreement does not grant to any Member or any employees, partners or other business associates thereof, any rights in any Intellectual Property or any inherent protectable interests, except those specifically provided by this Agreement.

XVI. Execution of Agreement

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as GISCon and the Members or additional Members shall preserve undestroyed, shall together constitute but one and the same instrument.

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EXHIBIT A

INITIAL MEMBERSHIP DUES FORMULA

Membership Fee = Basis x Allocation

Where: Basis = \$20,000

Allocation = Calculated by Consortium for member based on size, density, and other considerations

Fee Illustration

Allocation	Membership Fee

0%	NA
20%	\$4,000
30%	\$6,000
40%	\$8,000
50%	\$10,000
60%	\$12,000
70%	\$14,000
80%	\$16,000
90%	\$18,000
100%	\$20,000

EXHIBIT B

GIS CONSORTIUM SERVICE PROVIDER CONTRACT

This contract (this “**Contract**”) made and entered into this 1st day of September, 2017 (the “**Effective Date**”), by and between the Village of Arlington Heights, an Illinois municipal corporation (hereinafter referred to as the “**Municipality**”), and Municipal GIS Partners, Incorporated, 701 Lee Street, Suite 1020, Des Plaines, Illinois 60016 (hereinafter referred to as the “**Consultant**”).

WHEREAS, the Municipality is a member of the Geographic Information System Consortium (“**GISC**”);

WHEREAS, the Consultant is a designated service provider for the members of GISC and is responsible for providing the necessary professional staffing resource support services as more fully described herein (the “**Services**”) in connection with the Municipality’s geographical information system (“**GIS**”);

WHEREAS, the Municipality desires to engage the Consultant to provide the Services on the terms set forth herein; and

WHEREAS, the Consultant hereby represents itself to be in compliance with Illinois statutes relating to professional registration applicable to individuals performing the Services hereunder and has the necessary expertise and experience to furnish the Services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the promises hereinafter set forth, it is hereby agreed by and between the Municipality and the Consultant that:

SECTION 1 SCOPE OF SERVICES

1.1 Statement of Work. This Contract contains the basic terms and conditions that will govern the overall relationship between the Consultant and the Municipality. The Consultant will provide the Services described in the statement of work attached hereto as **Attachment 1** (“**Statement of Work**”), which shall become a part of and subject to this Contract.

1.2 Supplemental Statements of Work. Any additional services to be performed by the Consultant may be added to this Contract after the Effective Date by the mutual agreement of the parties, which agreement will be evidenced by mutual execution of a Supplemental Statement of Work which shall also be subject to the terms and conditions set forth in this Contract, a form of which is attached hereto as **Exhibit A**.

1.3 Additional Compensation. If the Consultant wishes to make a claim for additional compensation as a result of action taken by the Municipality, the Consultant shall give written notice of its claim within fifteen (15) days after occurrence of such action. Regardless of the decision of the Municipality Manager relative to a claim submitted by the Consultant, all work

required under this Contract as determined by the Municipality Manager shall proceed without interruption.

1.4 Contract Governs. If there is a conflict between the terms of this Contract and the Statement of Work or any Supplemental Statement of Work, unless otherwise specified in such Statement of Work, the terms of this Contract shall supersede the conflicting provisions contained in such Statement of Work.

SECTION 2 PERFORMANCE OF WORK

2.1 All work hereunder shall be performed under the direction of the Village Manager or his designee (hereinafter referred to as the “*Municipality Manager*”) in accordance with the terms set forth in this Contract and each relevant Statement of Work.

SECTION 3 RELATIONSHIP OF PARTIES

3.1 Independent Contractor. The Consultant shall at all times be an independent contractor, engaged by the Municipality to perform the Services. Nothing contained herein shall be construed to constitute a partnership, joint venture or agency relationship between the parties.

3.2 Consultant and Employees. Neither the Consultant nor any of its employees shall be considered to be employees of the Municipality for any reason, including but not limited to for purposes of workers’ compensation law, Social Security, or any other applicable statute or regulation.

3.3 No Authority to Bind. Unless otherwise agreed to in writing, neither party hereto has the authority to bind the other to any third party or to otherwise act in any way as the representative of the other.

SECTION 4 PAYMENT TO THE CONSULTANT

4.1 Payment Terms. The Municipality agrees to pay the Consultant in accordance with the terms and amounts set forth in the applicable Statement of Work, provided that:

(a) The Consultant shall submit invoices in a format approved by the Municipality.

(b) The Consultant shall maintain records showing actual time devoted to each aspect of the Services performed and cost incurred. The Consultant shall permit the authorized representative of the Municipality to inspect and audit all data and records of the Consultant for work done under this Contract. The Consultant shall make these records available at reasonable times during this Contract period, and for a year after termination of this Contract.

(c) The service rates and projected utilization set forth in the applicable Statement of Work shall adjust each calendar year in accordance with the annual rates approved by the Board of Directors of GISCS which shall be reflected in a Supplemental Statement of Work.

(d) Payments to the Consultant shall be made pursuant to the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

4.2 Service Rates. The service rates set forth in the Statement of Work include all applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties and fees arising from the use of, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

SECTION 5 TERM

5.1 Initial Term. Subject to earlier termination pursuant to the terms of this Contract, the initial term of this Contract shall commence on the Effective Date and remain in effect for three (3) year(s) (the “**Initial Term**”).

5.2 Renewal Terms. The Initial Term may be extended for successive one (1) year periods or for any other period as mutually agreed to in writing and set forth in a Supplemental Statement of Work executed by both parties (each, a “**Renewal Term**”).

SECTION 6 TERMINATION OF CONTRACT

6.1 Voluntary Termination. Notwithstanding any other provision hereof, the Municipality may terminate this Contract during the Initial Term or any Renewal Term, with or without cause, at any time upon thirty (30) days prior written notice to the Consultant. The Consultant may terminate this Contract or additional Statement of Work, with or without cause, at any time upon sixty (60) days prior written notice to the Municipality.

6.2 Termination for Breach. Either party may terminate this Contract upon written notice to the other party following a material breach of a material provision of this Contract by the other party if the breaching party does not cure such breach within ten (10) days of receipt of written notice of such breach from the non-breaching party.

6.3 Payment for Services Rendered. In the event that this Contract is terminated in accordance with this Section 6, the Consultant shall be paid for services actually performed and reimbursable expenses actually incurred.

SECTION 7

CONSULTANT PERSONNEL AND SUBCONTRACTORS

7.1 Adequate Staffing. The Consultant must assign and maintain during the term of this Contract and any renewal thereof, an adequate staff of competent employees, agents, or subcontractors (“*Consultant Personnel*”) that is fully equipped, licensed as appropriate and qualified to perform the Services as required by the Statement of Work or Supplemental Statement of Work.

7.2 Availability of Personnel. The Consultant shall notify the Municipality as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Consultant Personnel assigned to provide the Municipality with the Services. The Consultant shall have no claim for damages and shall not bill the Municipality for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the time of performance as a result of any such termination, reassigning, or resignation.

7.3 Use of Subcontractors. The Consultant’s use of any subcontractor or subcontract to perform the Services shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Contract. All Services performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of the Consultant. For purposes of this Contract, the term "Consultant" shall be deemed to refer to the Consultant and also to refer to all subcontractors of the Consultant.

7.4 Removal of Personnel and Subcontractors. Municipality may, upon written notice to Consultant, request that any Consultant Personnel be removed or replaced. Consultant shall promptly endeavor to replace such Consultant Personnel and Municipality shall have no claim for damages for a delay or extension of the applicable Statement of Work as a result of any such removal or replacement.

7.5 Non-Solicitation of Consultant Employees. The Municipality agrees that during the term of this Contract and for a period of one (1) year thereafter, it shall not, directly or indirectly, through any other person, firm, corporation or other entity, solicit, induce, encourage or attempt to induce or encourage any employee of the Consultant to terminate his or her employment with the Consultant or to breach any other obligation to the Consultant. The Municipality acknowledges that the aforementioned restrictive covenant contained in this Section is reasonable and properly required for the adequate protection of the Consultant’s business.

SECTION 8

ACCOMMODATION OF CONSULTANT PERSONNEL; MUNICIPAL FACILITIES

8.1 Facilities and Equipment. The Municipality shall provide the Consultant with adequate office space, furnishings, hardware, software and connectivity to fulfill the objectives of the GIS program. Facilities and equipment include, but are not limited to, the following:

(a) Office space for the Consultant's Personnel and periodic guests. This space should effectively and securely house all required GIS systems, peripherals and support tools. This space must be available during normal business hours;

(b) Furnishings including adequate desk(s), shelving, and seating for the Consultant's Personnel and periodic guests;

(c) A telephone line and phone to originate and receive outside calls;

(d) A network connection with adequate speed and access to the Internet; and

(e) Hardware, software, peripherals, and network connectivity to perform the program objectives efficiently.

8.2 Backup and Recovery Systems. The Municipality shall be responsible for installing, operating and monitoring the backup and recovery systems for all Municipality GIS assets that permit the Consultant to continue services within a reasonable period of time following a disaster or outage.

8.3 Right of Entry; Limited Access. Consultant's Personnel performing Services shall be permitted to enter upon the Municipality's property in connection with the performance of the Services, subject to those rules established by the Municipality. Consent to enter upon a Municipality's facility given by the Municipality shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Municipality. Consultant's Personnel shall have the right to use only those facilities of the Municipality that are necessary to perform the Services and shall have no right to access any other facilities of the Municipality.

SECTION 9 CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY; FOIA

9.1 Municipal Materials. The Consultant acknowledges and agrees that all trademarks, service marks, logos, tradenames and images provided by or on behalf of the Municipality to the Consultant for use in performing the Services and the GIS database (including files created from the database) created by Consultant hereunder (the "***Municipal Materials***") are the sole and exclusive property of the Municipality. The Consultant acknowledges that this Contract is not a license to use the Municipal Materials except as needed to perform the Services hereunder.

9.2 Third-Party Materials. If applicable, to the extent the Consultant has agreed to obtain and/or license Third-Party Materials on behalf of Municipality, the Consultant shall obtain a license for Municipality to use the Third-Party Materials as part of the Services for the purpose specified in the applicable Statement of Work. "***Third-Party Materials***" shall include, but are not limited to, computer software, script or programming code or other materials owned by third parties and/or any software available from third parties, that is licensed by Consultant for the benefit of the Municipality.

9.3 GIS Materials. It is expressly understood that, excluding the Municipal Materials and Third-Party Materials, all members of GISC and the Consultant may use or share in any improvements or modifications incorporated into any computer software (in object code and

source code form), script or programming code used or developed by the Consultant in providing Services hereunder (the “**GISC Materials**”).

(a) The Consultant hereby grants the Municipality a limited, personal, nontransferable, non-exclusive license to use the GISC Materials solely for the purpose of and in connection with the Municipality’s GIS. Upon expiration or termination of this Contract, or at such time the Municipality is no longer a member of GISC or in breach of its obligations hereunder, the Municipality shall not be entitled to or granted a license in future enhancements, improvements or modifications in the GISC Materials. The Municipality may grant a sublicense to a third party that the Municipality engages to maintain or update the GISC Materials in connection with the Municipality’s GIS; provided that such third party agrees in writing to be bound by the license restrictions set forth in this Contract.

(b) The Municipality acknowledges that the Consultant is in the business of providing staffing resource support services and that the Consultant shall have the right to provide services and deliverables to third parties that are the same or similar to the services that are to be rendered under this Contract, and to use or otherwise exploit any GISC Materials in providing such services. The Municipality hereby grants to the Consultant, a royalty-free, non-exclusive, irrevocable license throughout the world to publish modify, transfer, translate, deliver, perform, use and dispose of in any manner any portion of the GISC Materials.

9.4 Confidential Information. In the performance of this Contract, the Consultant may have access to or receive certain information in the possession of the Municipality that is not generally known to members of the public (“**Confidential Information**”). The Consultant acknowledges that Confidential Information includes, but is not limited to, proprietary information, copyrighted material, educational records, employee data, financial information, information relating to health records, resident account information, and other information of a personal nature. Consultant shall not use or disclose any Confidential Information without the prior written consent of the Municipality. Consultant will use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any Confidential Information received from or on behalf of the Municipality. Upon the expiration or termination of this Contract, Consultant shall promptly cease using and shall return or destroy (and certify in writing destruction of) all Confidential Information furnished by the Municipality along with all copies thereof in its possession including copies stored in any computer memory or storage medium. The term “Confidential Information” does not include information that (a) is or becomes generally available to the public other than as a result of a breach of this Contract by the Consultant; (b) was in the Consultant’s or Consultant Personnel’s possession on a non-confidential basis from any source other than the Municipality, which source, to the knowledge of the Consultant, is entitled to disclose such information without breach of any obligation of confidentiality; or (c) is independently developed by the Consultant without the use of or reference to, in whole or in part, any Confidential Information. For avoidance of doubt, it is agreed that the GISC Materials shall not be considered Confidential Information.

9.5 Dissemination of Confidential Information. Unless directed by the Municipality, Consultant shall not disseminate any Confidential Information. If Consultant is presented with a request for documents by any administrative agency or with a subpoena *duces tecum* regarding any Confidential Information which may be in Consultant's possession as a result of Services

provided under this Contract, unless prohibited by law, Consultant shall immediately give notice to the Municipality with the understanding that the Municipality shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Consultant shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Consultant shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Consultant under this Contract.

9.6 Freedom of Information Act Requests. No more than three business days after the Municipality's Notice to the Consultant of the Municipality's receipt of a request made pursuant to the Illinois Freedom of Information Act (ILCS 140/1 et seq. – herein "FOIA"), for Consultant's records, the Consultant shall furnish all requested records in the Consultant's possession which are in any manner related to this Contract or the Consultant's performance of the Services, including but not limited to any documentation related to the Municipality and associated therewith. If the Consultant cannot reasonably provide the requested records within the three day time frame, the Consultant will immediately notify the Municipality of its need for more time, including how much additional time is needed. If the Consultant believes the Municipality should deny the FOIA request or any portion thereof by utilizing one or more of the lawful exemptions provided for in the FOIA, the Consultant shall provide the Municipality the applicable exemption and its reasons for believing it applies. If the Municipality disagrees with the use of the exemption, it will provide its reasoning and discuss with the Consultant prior to a final decision being made. The Consultant shall not apply any costs or charge any fees to the Municipality or any other person, firm or corporation for its procurement and retrieval of such records in the Consultant's possession which are sought to be copied or reviewed in accordance with such FOIA request or requests. The Consultant shall defend, indemnify and hold harmless the Municipality including its several departments and including its officers and employees and shall pay all of the Consultant's Costs associated with such FOIA request or requests including Costs arising from the Consultant's failure or alleged failure to timely furnish such documentation and/or arising from the Consultant's failure or alleged failure otherwise to comply with the FOIA, whether or not associated with the Consultant's and/or the Municipality's defense of any litigation associated therewith. In addition, if the Consultant requests the Municipality to deny the FOIA request or any portion thereof by utilizing one or more of the lawful exemptions provided for in the FOIA, the Consultant shall pay all Costs in connection therewith. As used herein, "in the Consultant's possession" includes documents in the possession of any of the Consultant's officers, agents, employees and/or independent contractors; and "Costs" includes but is not limited to attorneys' fees, witness fees, filing fees and any and all other expenses — whether incurred by the Municipality or the Consultant.

9.7 News Releases. The Consultant may not issue any news releases without prior approval from the Municipality Manager nor will the Consultant make public proposals developed under this Contract without prior written approval from the Municipality Manager.

SECTION 10 LIMITATION OF LIABILITY

10.1 THE REPRESENTATIONS SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. UNDER NO CIRCUMSTANCES SHALL EITHER THE CONSULTANT OR THE MUNICIPALITY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING LOST SALES OR PROFITS, IN CONNECTION WITH THIS CONTRACT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SECTION 11 CONSULTANT WARRANTY; INDEMNIFICATION; INSURANCE

11.1 Warranty of Services. The Consultant warrants that the Services shall be performed in accordance with industry standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the time of the Effective Date. Unless expressly excluded by this Contract, the warranty expressed shall be in addition to any other warranties expressed in this Contract, or expressed or implied by law, which are hereby reserved unto the Municipality.

11.2 Indemnification. The Consultant shall indemnify and save harmless the Municipality and its officers, employees, and agents from and against any and all loss, liability and damages of whatever nature, including Workmen's Compensation claims by Consultant's employees, in any way resulting from or arising out of the negligent actions or omissions of the Consultant, the Consultant's employees and agents.

11.3 Insurance. The Consultant must procure and maintain, for the duration of this Contract, insurance as provided in **Attachment 2** to this Contract.

11.4 No Personal Liability No official, director, officer, agent, or employee of any party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Contract or because of its or their execution, approval or attempted execution of this Contract.

SECTION 12 GENERAL PROVISIONS

12.1 No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 et seq. of the Illinois

Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.*

12.2 Sexual Harassment Policy. The Consultant certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4).

12.3 Compliance with Laws and Grants. Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Consultant shall also comply with all conditions of any federal, state, or local grant received by Municipality or Consultant with respect to this Contract or the Services.

12.4 Assignments and Successors. This Contract and each and every portion thereof shall be binding upon the successors and the assigns of the parties hereto; provided, however, that no assignment, delegation or subcontracting shall be made without the prior written consent of the Municipality.

12.5 Severability. The parties intend and agree that, if any paragraph, subparagraph, phrase, clause, or other provision of this Contract, or any portion thereof, shall be held to be void or otherwise unenforceable, all other portions of this Contract shall remain in full force and effect.

12.6 Third Party Beneficiary. No claim as a third party beneficiary under this Contract by any person, firm, or corporation other than the Consultant shall be made or be valid against the Municipality.

12.7 Waiver. No waiver of any provision of this Contract shall be deemed to or constitute a waiver of any other provision of this Contract (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Contract.

12.8 Governing Laws. This Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois. Venue shall reside in Cook County, Illinois.

12.9 Headings. The headings of the several paragraphs of this Contract are inserted only as a matter of convenience and for reference and in no way are they intended to define, limit, or describe the scope of intent of any provision of this Contract, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

12.10 Modification or Amendment. This Contract constitutes the entire Contract of the parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written amendment or Supplemental Statement of Work duly executed by the parties. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly executed amendment hereof.

12.11 Attachments and Exhibits. Attachments 1 and 2 and Exhibit A are attached hereto, and by this reference incorporated in and made a part of this Contract. In the event of a conflict between any Attachment or Exhibit and the text of this Contract, the text of this Contract shall control. In the event of any conflict or inconsistency between the terms of this Contract and any Supplemental Statement of Work, the terms of the Supplemental Statement of Work will govern and control with respect to the term, projected utilization rates, service rates and scope of services.

12.12 Rights Cumulative. Unless expressly provided to the contrary in this Contract, each and every one of the rights, remedies, and benefits provided by this Contract shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

12.13 Notices. All notices, reports and documents required under this Contract shall be in writing (including prepaid overnight courier, electronic transmission or similar writing) and shall be given to such party at its address or e-mail address set forth below, or at such other address or e-mail address as such party may hereafter specify from time to time. Each such notice shall be effective (i) if given by first class mail or prepaid overnight courier, when received, or (ii) if sent to an e-mail address, upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment).

If to Municipality: Village of Arlington Heights
Diana Mikula
33 South Arlington Heights Road
Arlington Heights, IL 60005
E-mail: dmikula@vah.com

If to Consultant: Municipal GIS Partners, Incorporated
Thomas A. Thomey
701 Lee Street, Suite 1020
Des Plaines, IL 60016
E-mail: tthomey@mgpinc.com

12.14 Counterpart Execution. This Contract, Statement of Work or any Supplemental Statement of Work may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[REMAINDER INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have placed their hands and seals hereto as of the date first above written.

ATTEST:

VILLAGE OF ARLINGTON HEIGHTS

By: _____
Name: Rebecca Hume
Its: Village Clerk

By: _____
Name: Thomas W. Hayes
Its: Village President

ATTEST:

CONSULTANT:

**MUNICIPAL GIS PARTNERS,
INCORPORATED**

By: Donna J. Thomey
Name: Donna Thomey
Its: Office Administrator

By: Thomas A. Thomey
Name: Thomas Thomey
Its: President

Attachment 1

Statement of Work to GIS Consortium Service Provider Contract

1) General Purpose. The Consultant will perform all or part of the Municipality's geographic information system (GIS) management, development, operation, and maintenance. In addition to supporting the existing GIS program, the Consultant will identify opportunities for continued development and enhancement.

The Municipality will be sharing management, development, maintenance expertise and staffing with other municipalities as a member of the Geographic Information System Consortium (GISC). The benefits to the Municipality include, but are not limited to, collective bargaining for rates and services, shared development costs, and joint purchasing and training.

The Consultant is the sole Service Provider for GISC and is responsible for providing the necessary GIS professional resources to support this entity. The Consultant will facilitate and manage resource, cost, and technical innovation sharing among GISC members.

2) Service Types. The Consultant will provide two (2) service types. The intent of this distinction is to track specific types of investment without overburdening general operation of the GIS program. Many of these services will go unnoticed but are required to sustain the GIS program. The Consultant will employ reasonable professional discretion when specific direction is not provided. The two (2) services types are as follows:

A. Services related to the direct management, development, operation, and maintenance of the GIS required to reasonably support the system.

B. Services relating to the investigation, research, and development of new functionality and capability for the GIS Consortium and its members.

3) Services. The Consultant will provide the necessary resources to support the GIS program. The allocation of these resources will be reasonably commensurate with the level of expertise required to fulfill the specific task which includes, but is not limited to, the following:

A. The GIS Specialist provides the daily operation, maintenance, and support of the GIS program for the community. The GIS Specialist is responsible for database development and maintenance, map and product development, user training, help-desk, system support, and program documentation.

B. GIS/RAS (Remote Access Service) Specialist provides the same services as the GIS Specialist utilizing equipment hosted by the Consultant.

C. The GIS Coordinator is responsible for the coordination and operation of the GIS program for the community including planning, forecasting, resource allocation and performance management.

D. The GIS Analyst is responsible for providing technical support to the GIS Specialist including trouble-shooting, special projects, and access to GISC shared applications and extensions. The GIS Analyst also supports the development of GISC projects and programs.

E. The GIS Platform Administrator is responsible for developing, managing, and directing the GISC solutions including the data model, databases and centralized software applications offered by the GISC.

F. The GIS Application Developer is responsible for developing, testing, and supporting software applications developed by the GISC for its members.

G. The GIS Manager is responsible for the overall development and implementation of the GISC program based on the direction and instructions of the GISC Board of Directors.

4) Projected Utilization and Service Rates. The service rates set forth below are based on, among other things, the negotiated annual projected utilization of all GISC members. The Consultant shall negotiate annually with the Board of Directors (the “**Board**”) of GISC to adjust the annual projected utilization and service rates for the members of GISC. It is anticipated that the Consultant will submit its proposed annual projected utilization and service rates (the “**Proposal**”) to the Board for approval every year on or about July 31st. Upon the Board’s approval of the Proposal, the annual projected utilization and service rates shall become binding on the Municipality and incorporated into this Contract by reference, which shall automatically become effective on January 1st and remain in effect for the remainder of such calendar year. The approved annual projected utilization and the service rates will be promptly distributed by the Board or the Consultant to the Municipality. Notwithstanding the foregoing, in the event the Board, for any reason whatsoever (including the Board being disbanded) does not approve the Proposal, the Consultant may submit its proposed annual projected utilization and service rates directly to the Municipality by no later than October 1st, and upon written approval by the Municipality shall become effective on January 1st. Consultant agrees that, each year, the new aggregate annual contract value for the Municipality will not exceed the greater of (i) cost-of-living adjustments based on the CPI¹ measured as of the most recent CPI number available prior to submitting the Proposal, or (ii) 3%. The GISC service and projected utilization rates set forth below are effective as of the Effective Date until December 31st:

A. Projected Utilization

1. 548 hours of GIS Specialist

¹For purposes of this Contract, “CPI” shall mean the all items Consumer Price Index for all Urban Consumers in the Chicago-Gary-Kenosha area. In the event that publication or issuance of the Index is discontinued or suspended, the CPI shall be an index published or issued by the United States Department of Labor or any bureau or agency thereof that computes information from substantially the same statistical categories and substantially the same geographic areas as those computed in the CPI and that weights such categories in a substantially similar way to the weighting of the CPI at the Effective Date. The CPI rates, solely for reference purposes, may be accessed at <http://www.bls.gov/ro5/cpichi.htm>, it being understood that the Consultant makes no representation or warranty that the rates published on such website are accurate.

2. X hours of GIS/RAS Specialist
3. 55 hours of Client Account Manager
4. 55 hours of GIS Analyst
5. 31 hours of GIS Platform Administrator
6. 31 hours of GIS Application Developer
7. 31 hours of GIS Manager

B. Service Rates

1. \$ 77.80 per hour for GIS Specialist
2. \$ 81.30 per hour for GIS/RAS Specialist
3. \$ 99.00 per hour for GIS Coordinator
4. \$ 99.00 per hour for GIS Analyst
5. \$ 123.30 per hour for GIS Platform Administrator
6. \$ 123.30 per hour for GIS Application Developer
7. \$ 123.30 per hour for GIS Manager

Total Not-to-Exceed Amount for Services (Numbers): \$64,802.00

Total Not-to-Exceed Amount for Services (Figures): sixty-four thousand eight hundred two dollars and zero cents.

Attachment 2

To GIS Consortium Service Provider Contract

Insurance

Consultant's Insurance

Consultant shall procure and maintain, for the duration of this Contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance:** Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability occurrence form CG 0001 with the Municipality named as additional insured, on a form at least as broad as the ISO Additional Insured Endorsement CG 2010 and CG 2026
2. Insurance Service Office Business Auto Liability coverage form number CA 0001, Symbol 01 "Any Auto."
3. Workers' Compensation as required by the Labor Code of the State of Illinois and Employers' Liability insurance.

B. **Minimum Limits of Insurance:** Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The general aggregate shall be twice the required occurrence limit. Minimum General Aggregate shall be no less than \$2,000,000 or a project/contract specific aggregate of \$1,000,000.
2. **Business Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. **Workers' Compensation and Employers' Liability:** Workers' Compensation coverage with statutory limits and Employers' Liability limits of \$500,000 per accident.

C. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the Municipality. At the option of the Municipality, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as it respects the Municipality, its officials, agents, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages: The Municipality, its officials, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Municipality, its officials, agents, employees and volunteers.

2. The Consultant's insurance coverage shall be primary as respects the Municipality, its officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Municipality, its officials, agents, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Municipality, its officials, agents, employees and volunteers.

4. The Consultant's insurance shall contain a Severability of Interests/Cross Liability clause or language stating that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form," then the Consultant shall be required to name the Municipality, its officials, employees, agents and volunteers as additional insureds

6. All general liability coverages shall be provided on an occurrence policy form. Claims-made general liability policies will not be accepted.

7. The Consultant and all subcontractors hereby agree to waive any limitation as to the amount of contribution recoverable against them by the Municipality. This specifically includes any limitation imposed by any state statute, regulation, or case law including any Workers' Compensation Act provision that applies a limitation to the amount recoverable in contribution such as *Kotecki v. Cyclops Welding*.

E. All Coverages: Each insurance policy required by this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Municipality.

F. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and licensed to do business in the State of Illinois.

G. Verification of Coverage: Consultant shall furnish the Municipality with certificates of insurance naming the Municipality, its officials, agents, employees, and volunteers as additional insured's and with original endorsements, affecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the Municipality before any work commences. The Municipality reserves the right to request full certified copies of the insurance policies and endorsements.

IN WITNESS WHEREOF, the undersigned have caused this Agreement for the Creation of a Geographic Information System Consortium to be executed in the Members respective name, and have caused this Agreement for the Creation of a Geographic Information System Consortium to be attested, all by their duly authorized officers and representatives, and have caused the Agreement for the Creation of a Geographic Information System Consortium to be dated this 7th day of August, 2017.

Village of Arlington Heights

By: _____

Its: Village President

ATTEST:

Village Clerk

Seal