

Marian Gibson

From: Tillman, Mike
Sent: Friday, July 21, 2017 3:23 PM
To: Julie Friebele
Cc: Marian Gibson
Subject: RE: Municipal Management Services - Personnel Services Contract

Thank you very much, Julie! Have a great weekend!

Mike

From: Julie Friebele [mailto:julie.friebele@villageofelwood.com]
Sent: Friday, July 21, 2017 1:18 PM
To: Tillman, Mike <MTillman@norcomm911.com>
Cc: Marian Gibson <marian.gibson@villageofelwood.com>
Subject: Municipal Management Services - Personnel Services Contract

Good Afternoon Mr. Tillman,

Attached is the Municipal Management Services – Personnel Services Contract executed by Mayor Matichak. I will mail (2) contracts to you via US mail. Please execute contracts and return (1) fully executed contract to me.

Thank you for your assistance and enjoy your day!

Julie Friebele
Executive Administrative Assistant, Village Clerk
Village of Elwood
401 E. Mississippi Avenue
Elwood, IL 60421
815-424-1079 Fax 815-423-6861

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Marian Gibson

From: Tillman, Mike
Sent: Friday, July 07, 2017 2:21 PM
To: julie.friebele@villageofelwood.com
Cc: Gibson Marian
Subject: RE: Municipal Management Services Contract - Marian T. Gibson CRM:0013005
Attachments: MMS - Village of Elwood- Village Administrator Agreement DRAFT fjp comments 7-5-17.docx; Exhibit_A_VillageAdministratorJobDescription 7-11-16.docx

Hi Julie,

Our legal department made one minor revisions to the agreement that is not substantive. The change is as follows:

1) In Article 1 added "pursuant to Article 2"

I've attached a copy of the agreement that contains the change using the MS Word Track Changes Feature so that the change can easily be identified.

Can you please let me know if the agreement was approved at last Wednesday night board meeting? If yes and if ok with the change we made to the agreement, please let me know and I will do the following:

- 1) Print two copies of the agreement
- 2) Sign both copies of the agreement
- 3) Send both copies of the agreement to the Village of Elwood so that the Mayor can sign both copies and send one copy back to me for my files.

Please let me know if you have any questions.

Thanks!

Mike

-----Original Message-----

From: julie.friebele@villageofelwood.com [mailto:julie.friebele@villageofelwood.com]
Sent: Monday, July 03, 2017 7:42 PM
To: Tillman, Mike <MTillman@norcomm911.com>
Cc: Gibson Marian <marian.gibson@villageofelwood.com>
Subject: Re: Municipal Management Services Contract - Marian T. Gibson

Thank you!

Sent from my iPhone

> On Jul 3, 2017, at 7:19 PM, Tillman, Mike <MTillman@norcomm911.com> wrote:

>
> Hi Julie,
>

> Attached is a DRAFT copy of the agreement. I'm sending to you in DRAFT format because our company policy requires that all agreements be reviewed by our legal department prior to executing the Agreement.

>

> Given the late notice for the renewal and the holiday being tomorrow, I won't be able to have our legal department review between now and the Village's Wednesday night Board meeting. However, I'm pretty confident that the agreement will not change much and probably not at all.

>

> I can tell you that the monetary amount reflected in the agreement, which is unchanged from last year, is locked in and will not change so you don't have to worry about an fee increases.

>

> Please let me know if you have any questions.

>

> Sincerely,

>

> Mike

>

>

> Michael G Tillman, RPL | Vice President Metro Paramedic Services, Inc.

> NORCOMM Public Safety Communications, Inc.

> Municipal Management Services, Inc.

> Paramedic Billing Services, Inc.

> 395 W. Lake St | Elmhurst, IL 60126

> Phone: 630-530-2991 | Direct Line: 630-903-2480

> Wireless: 630-596-7403 | Direct Fax: 630-903-2809

> mtillman@metroparamedics.com | <http://www.metroparamedics.com>

> mtillman@norcomm911.com | <http://www.norcomm911.com>

>

>

>

> -----Original Message-----

> From: Julie Friebele [mailto:julie.friebele@villageofelwood.com]

> Sent: Monday, July 03, 2017 6:50 PM

> To: Tillman, Mike <MTillman@norcomm911.com>

> Subject: RE: Municipal Management Services Contract - Marian T. Gibson

>

> Thank you again!

>

> -----Original Message-----

> From: Tillman, Mike [mailto:MTillman@norcomm911.com]

> Sent: Monday, July 03, 2017 6:45 PM

> To: Julie Friebele <julie.friebele@villageofelwood.com>

> Subject: Re: Municipal Management Services Contract - Marian T. Gibson

>

> Ok. I'll see what I can do to get you a draft copy.

>

> Sent from my iPhone

>

>> On Jul 3, 2017, at 6:41 PM, Julie Friebele

> <julie.friebele@villageofelwood.com> wrote:

>>

>> Hi Mike,

>>

>> Thank you for getting back to me so rapidly. Yes, I will need the
>> agreement before the meeting. It has been a little crazy around here
>> but I believe Ms. Gibson told me she spoke with you and there would
>> not be a need for an increase. Please keep the wages the same, and if
>> it is to be amended, I will notify you.

>>

>> Thank you and happy and safe 4th of July,

>>

>> Julie Friebele

>> Executive Administrative Assistant, Village Clerk Village of Elwood
>> 401 E. Mississippi Avenue
>> Elwood, IL 60421
>> 815-424-1079 Fax 815-423-6861

>>

>>

>> -----Original Message-----
>> From: Tillman, Mike [mailto:MTillman@norcomm911.com]

>> Sent: Monday, July 03, 2017 6:36 PM

>> To: Julie Friebele <julie.friebele@villageofelwood.com>

>> Subject: Re: Municipal Management Services Contract - Marian T.

>> Gibson

>>

>> Hi Julie,

>>

>> Do you need the agreement before the Board meeting? Also, will there
>> be any additional consideration for Marian Gibson or are we looking
>> to keep her wages the same?

>>

>> Mike

>>

>> Sent from my iPhone

>>

>> On Jul 3, 2017, at 6:16 PM, Julie Friebele

>>

> <julie.friebele@villageofelwood.com<<mailto:julie.friebele@villageofelwood.com>>> wrote:

>>

>> Good Afternoon Mike,

>>

>> Would you please send me the Municipal Management Services Contract
>> to renew Marian T. Gibson's contract with the Village of Elwood for
>> Village Administrator services? The contract is on the July 5, 2017
>> agenda for consideration.

>>

>> Thank you,

>> Julie Friebele

>> Executive Administrative Assistant, Village Clerk Village of Elwood

>> 401 E. Mississippi Avenue

>> Elwood, IL 60421

>> 815-424-1079 Fax 815-423-6861

>>

>>

>> _____

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> please notify the sender immediately at 1-800-832-2000
> <Exhibit_A_VillageAdministratorJobDescription 7-11-16.docx> <MMS -
> Village of Elwood- Village Administrator Agreement DRAFT 7-3-17.docx>

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**MUNICIPAL MANAGEMENT SERVICES,
INC.**

**PERSONNEL SERVICES CONTRACT
FOR THE
Village of Elwood**

August 29, 2017 through August, 28, 2018

This Agreement made and entered into this 29th day of August 2017, by and between Municipal Management Services, Inc., an Illinois Corporation, (hereafter referred to as "Contractor"), and the Village of Elwood, an Illinois Municipal Corporation (hereinafter referred to as "Village"), together the Contractor and the Village are collectively referred to as the "parties").

WHEREAS, the Contractor is in the business of furnishing personnel to municipalities for various positions;

WHEREAS, the Village provides municipal services for residents of the Village;

WHEREAS, the Village wishes to out-source its Village Administrator position on an independent contractor basis in order to obtain the Contractor's services for Administration and Management of Village, and the Contractor wishes to provide such services on an independent contractor basis to the Village (the "Assignment"); and

WHEREAS, as used in the Agreement, the terms "personnel" and "employees" mean the Contractor's employees placed with the Village pursuant to this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, the parties agree as follows:

ARTICLE 1: Term.

The term of this Agreement shall be for a period of one (1) year commencing August 29, 2017 and ending August 28, 2018 ("Initial Term") unless cancelled earlier by written notice by either party or terminated by written notice of a breach of this Agreement pursuant to Article 2[PF1], or operation of law, in which case this Agreement will terminate immediately on the date of the written notice, unless such early cancellation or termination would give rise to liability to either party under the federal or state laws known as WARN Acts or similar laws, in which case such cancellation or termination shall be delayed so the parties can provide appropriate notices or take other steps to avoid liability under such laws as allocated under this Agreement or by operation of law. The Initial Term of this Agreement shall automatically renew for subsequent sixty (60) day terms ("Subsequent Terms) unless earlier terminated by written notice by either party sixty (60) days before the end of either the Initial Term or any Subsequent Term or written notice of a breach by either party or by operation of law or unless a new agreement is executed by the parties.

ARTICLE 2: Cancellation.

Either party to this Agreement may cancel this Agreement without cause upon providing the other party sixty (60) days' written notice prior to the expiration of the Initial Term or any Subsequent Term and this Agreement and the parties' obligations thereunder shall end at the end of such sixty (60) notice period. If one party shall commit a material breach of this Agreement, the other party shall provide a detailed written statement of the claimed material breach. The allegedly breaching party shall have five (5) business days to cure such breach, if curable, unless residents' safety forms the basis, in whole or in part, of the material breach, in which case, the breach must be cured within forty-eight (48) hours of notice of the breach. The acceptance of such cure shall not be unreasonably withheld. Where the cure has not been accepted, the Contractor shall have an opportunity to be heard by the Village's Board of Trustees or similar entity before any decision on termination or cancellation is made. Where the cure has not been accepted and opportunity to be heard has occurred, this Agreement shall terminate on the expiration date of the cure period or any extension given on the basis of the opportunity to be heard, unless the parties agree that additional time is necessary to ensure an orderly transfer of Village Administrator position service to ensure the safety of the citizens of the Village, but in no event shall such additional time extend for more than 30-days without agreement of both parties.

Upon termination of this Agreement, the Village's sole obligation to the Contractor shall be to remit any outstanding payments owed to the Contractor for services rendered up to and including the expiration date.

ARTICLE 3: Personnel Provided.

The Contractor shall utilize its best efforts to provide personnel identified below with the required skills, experience, and other qualifications for the Assignment, including but not limited to recruiting, interviewing, any applicable testing, performing background checks, selecting, hiring, disciplining, controlling, directing and terminating the personnel that it furnishes pursuant to this Agreement;

However, in no event does the Contractor guarantee the qualifications or fitness of any personnel provided by the Contractor for any particular purpose and in fact disclaims such guarantee, liability, or warranty to the fullest extent permitted by law.

- a. The Contractor shall provide one (1) full-time Village Administrator to the Village. The Village Asministrator shall be scheduled to work 40-50 hours per week as a Village Administrator. The Village Administrator shall operate under the direction and supervision of

Contractor and in consultation with the Village Board of Trustees and Mayor.

- b. The Contractor shall assign replacement personnel, to be chosen in Contractor's discretion, to the Assignment in the event of long-term illness, or any other event that causes long-term absence of the regularly assigned Village Administrator. The Contractor shall take the same best efforts to ensure that replacement personnel have the same necessary qualifications that Contractor requires of the regularly assigned Village Administrator.
- c. If the employment of any assigned Contractor's employee is terminated with Contractor, the Contractor shall immediately notify the Village Board of Trustees and the Contractor shall provide a suitable replacement.
- f. Prior to beginning work on the Assignment, the Contractor shall take reasonable measures to require that all assigned personnel shall attend Contractor's orientation program at Contractor's facility and at Contractor's expense.
- i. Personnel provided pursuant to this Agreement shall be required to meet the Essential Duties, Job Functions, and possess the required Knowledge, Skills, Abilities and Minimum Qualifications as described in Exhibit A of this Agreement.
- k. The Village shall be solely responsible to provide Contractor's employees with use of the Village's facilities and vehicles while on duty so that Contractor's employees shall have ready access to perform its Assignment.

ARTICLE 4: Selection of Personnel.

In order to ensure the orderly and safe operation of Village pursuant to this Agreement and consistent with all legal authority, the provision and selection of personnel shall be as follows:

- a. The Village may request the Contractor to no longer assign any given Contractor's employee to the Village for any legal reason. Such request shall be made in writing and shall detail the reason(s) for the request. Upon receipt of such request, the Contractor shall conduct an immediate review and, after such review, if reassignment is deemed appropriate, Contractor shall make the determination as to whether or not to replace its employee with another qualified employee and shall provide a permanent replacement within a

reasonable period. All temporary and permanent replacement Contractor's employees shall be selected in accordance with the foregoing provisions of this Agreement. However, the power to hire and terminate personnel shall at all times reside with the Contractor.

- b. The Contractor shall conduct drug screenings and background checks on personnel assigned to perform services under this Agreement which may include a criminal screening to the extent permitted by law. To the extent that additional pre-employment testing or screening is requested by the Village or required by law, the Contractor will be solely responsible for implementing such pre-employment screening, and employment term screening, and will assemble all other required documentation for each applicant or personnel. The Contractor will furnish a true and correct copy of the results of the tests, screens, and all other required documentation, if requested, to the Village. The Contractor warrants that it has or will lawfully obtain all such tests, screens and other documentation and that it is authorized to furnish it under the terms of this Agreement.
- c. Contractor shall solely be responsible for recruiting, interviewing, testing, performing background checks, drug screenings, selecting, hiring, disciplining, controlling, directing and terminating the personnel that it furnishes pursuant to this Agreement.

ARTICLE 5: Duties.

In order to ensure the orderly and safe operation of Village pursuant to this Agreement and consistent with all authority, the duties of Contractor's personnel shall be as follows:

- a. Contractor's regular and replacement personnel employees assigned shall perform Village Administrator duties and any related operational matters as assigned by the Contractor in consultation with the Village's Board of Trustees or Mayor and in accordance with the job description contained in Exhibit A. All regular and replacement personnel serve under the supervision of the Contractor in consultation with the Village's Board of Trustees or Mayor. Operational matters exclude employment and disciplinary related matters which shall be under the purview of Contractor; personnel shall report to Contractor for all employment and disciplinary related matters of its employee.
- b. Contractor will maintain employment, training and certification records for Contractor's employees assigned to the Village.

ARTICLE 6: Consideration.

a. Year 1: In consideration for the services to be provided by Contractor to the Village pursuant to the provisions of this Agreement, the Village will pay Contractor the total sum of \$114,036.00 payable in twelve monthly installments of \$9,503.00, due and payable on the 28th day of each month, commencing September 1st, 2017, subject to adjustment pursuant to the terms of this Agreement.

If the Village Administrator opts to enroll in the Contractor's Health Benefit Package, Contractor shall charge an additional annual fee described below based on the health insurance package that is chosen by its employee:

• Silver Employee Only	\$8,012.54
• Silver Employee + 1	\$18,786.34
• Silver Family	\$28,495.70
• Gold Employee Only	\$8,740.08
• Gold Employee +1	\$20,450.22
• Gold Family	\$30,926.54

d. The parties agree that the fees set forth in Article 6(a) are based on their assumption that the personnel assigned to the Village will work the hours set forth in Article 3(a). If compensation to assigned personnel should vary during the term of this Agreement, the parties agree to re-negotiate the fees in good faith to reach a fair price that compensates Contractor for any increased costs (including but not limited to contributions to Contractor's Profit Sharing 401(k) plan and health insurance premiums) as well as a reasonable administrative fee.

e. The Contractor shall be solely responsible for:

- i. Compensating and providing the employment benefits set forth in this Agreement, if any;
- ii. Making all required deductions from compensation paid to the personnel and timely remitting such deductions and any required contributions from the Contractor to the appropriate government agency as required by law;
- iii. Complying with all applicable federal, state and local laws and regulations regarding the employment of such personnel.

- iv. The Contractor will properly and timely file all required reports and other information with the Internal Revenue Service, Social Security Administration, and all applicable state and local tax agencies.
- v. The Contractor's personnel and employees shall not be entitled to participate in any of the Village's employee benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay, and other similar plans, programs and agreements, whether reduced to writing or not.
- vi. The Contractor will use its best efforts to ensure that each personnel assigned to the Assignment will be at least 18 years of age and either a United States citizen or an individual lawfully entitled to perform work. The Contractor shall be solely responsible for any audits, fines or other penalties resulting from its failure to fulfill the obligations of this paragraph and shall defend, protect, and hold harmless the Village, to the extent permitted by law, from such audits, fines or penalties described above.
- vii. The Village will promptly advise the Contractor in writing of any billing dispute or any other problem. The Village and the Contractor will identify and attempt to promptly resolve all billing disputes through face-to-face meetings between the Village and the Contractor's representative in charge of this account. If the parties are unable to resolve the dispute through face-to-face meetings, the parties agree to submit the dispute to a mediator agreed upon by the parties or in accordance with the rules of the JAMS, with each party bearing half of the mediation costs. The Village will pay the undisputed portion of billable transactions as set forth above.
- viii. The Contractor and the Village will promptly furnish to the other party such information that such other party may request to enable each of them to analyze the services and the activities of the other party and the personnel involved in the dispute.

ARTICLE 7: Limitation of Authority.

Contractor and its employees shall have the authority to provide services under this Agreement, make and implement day-to-day decisions that are necessary in the performance of its obligations herein, and render directions to all

third parties in connection therewith. Notwithstanding anything contained herein to the contrary, in no event shall Contractor or its employees assigned to Village pursuant to this Agreement have the right or authority, express or implied, to commit, bind or obligate the Village contractually or otherwise to any liability or agreement or to cause the Village to incur any obligation to any third party without the approval of the Village's Board of Trustees via a resolution or ordinance.

The parties agree that they shall not use the name, trademarks, or service marks of the other party for the purposes of advertising, sales promotion or other similar purposes without the prior written approval of the other party. Neither the Contractor nor the Village shall publicly announce or disclose the terms and conditions of this Agreement without the prior written approval of the other party, absent a legal obligation to do so or pursuant to a subpoena or legal process.

ARTICLE 8: Equipment.

In order to ensure the orderly and safe operation of Village consistent with all legal authority, the Village shall supply a Village owned vehicle for all regular and replacement personnel. The Village will be responsible for all repairs, insurance, maintenance and any other direct or indirect costs of Village vehicles. The vehicle, and any other equipment assigned to Contractor's employee, and all direct or indirect costs thereof shall not be a separate charge incurred by Contractor under this Agreement; the costs thereof have been taken into account by Contractor in setting forth the consideration in Article 6, and is inclusive of the consideration set forth in Article 6.

ARTICLE 9: Insurance.

Contractor shall provide:

- a. **Workers Compensation Insurance.** Contractor shall purchase, and upon request shall provide evidence that it has secured workers' compensation insurance for its employees in amounts required by Illinois law.
- b. **Professional and General Liability Insurance.** Contractor shall purchase, and upon request shall provide evidence that it has secured, for itself and its employees, professional and general liability insurance with a single limit of \$1,000,000 (one million dollars), and additional aggregate coverage of at least \$10,000,000 (ten million dollars).
- d. **Non-Owned, Owned and Hired Automobile Insurance.** Both Contractor and Village shall purchase, and upon request shall provide evidence that they have secured, coverage for Contractor and Contractor's employees for occurrences arising while

Contractor's employees are driving Village's vehicles, with a minimum single limit of \$1,000,000 (one million dollars) per occurrence, and additional aggregate coverage of at least \$2,000,000 (two million dollars). It is expressly understood and agreed by the parties that while an employee of Contractor is driving a vehicle owned by the Village, the Village's insurance shall be primary.

- e. To the extent permitted by law, if the Village has insurance or coverage that directly or indirectly covers the acts or omissions of the Contractor or its personnel in connection with their performance pursuant to this Agreement, the Village shall provide the Contractor with a certificate of insurance or other proof of coverage acceptable to the Contractor, and the Village agrees to cooperate in causing the Contractor and its personnel to be additional insured under such insurance or coverage, and immediately notify the Contractor in the event such insurance or coverage lapses, expires, or is otherwise terminated.

ARTICLE 10: Administration.

- a. The Contractor shall be responsible for processing all reports, as required under federal, state, or Village rules and regulations.
- b. If this Agreement or any provision or report prepared in accordance with this Agreement is subject to or requested by any governmental agency, the Contractor shall have primary responsibility for complying with such request and shall truthfully respond to all agency requests, with notice to the Village, to the extent such notice is permitted by law or the applicable agency, and the Contractor shall preserve such books and records, at a minimum, for the legally required time period.
- c. The Contractor shall keep adequate original records at the Contractor's principal place of business to allow the Village and its agents to obtain information regarding the personnel furnished and services rendered under this Agreement. The Village and its agents shall have the right to inspect such records and shall be given access to such records at any reasonable time upon the Village's request. This provision shall survive the termination of this Agreement. The Contractor shall maintain the records pertaining to the services rendered upon the behalf of the Village, at a minimum, during the term of this Agreement and for the legally required period.

ARTICLE 11: Relationship of the Parties.

- a. Notwithstanding anything to the contrary in this Agreement or elsewhere, the Contractor is an independent contractor with respect to the Village. There is no agency, employment relationship, partnership, or joint venture between the Contractor, its employees, and the Village and/or the Village's employees. No one connected with the Contractor, except in a writing signed by the chief executive of the Contractor, has any authority to make any binding promises or agreements contrary to the foregoing.
- b. Contractor's employees shall be, for all purposes, bona fide employees of Contractor and not of Village. Except as otherwise provided in this Agreement, all employment-related costs, benefits and expenses arising out of the relationship between Village and Contractor, including, but not limited to wages, state, local and federal taxes, benefits, insurance premiums, and contributions to insurance, pension, or other deferred compensation plans, including Social Security, unemployment insurance and workers' compensation obligations, shall be the sole responsibility of Contractor. Contractor's employees shall also be subject to all personnel policies and regulations applicable to Contractor's employees generally, including time off with or without pay and leaves of absence, including under the Family and Medical Leave Act or any similar state law. While Contractor's employees are providing services hereunder, the Village shall be responsible for maintaining a safe, healthy and non-discriminatory working environment in compliance with all applicable federal, state and local laws, regulations and ordinances. The Contractor and the Village agree that the Contractor is an independent contractor and shall be liable for its own actions. Neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined in this Agreement. The Contractor, including its employees, shall not be considered, entitled or eligible to participate in any benefits or privileges given or extended by the Village or be deemed an employee of Village for any purposes, including but not limited to, for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation and other employer contributions not specifically provided for in this Agreement. The Contractor shall retain the exclusive right to hire, discipline, compensate and terminate its employees pursuant to the Contractor's policies and procedures and consistent with the terms of this Agreement.

ARTICLE 12: Compliance with Law.

The parties agree to use their best efforts to adhere to all county, state and federal rules, regulations, codes, ordinances, and charters applicable, including but not limited to the following:

- a. **State of Illinois Anti-Discrimination Laws (775 ILCS 5/101/ et seq.).** In carrying out the performance required under this Agreement, the parties agree to use their best efforts to comply with all applicable provisions of the Illinois Human Rights Act, and rules and regulations promulgated by the Illinois Department of Human Rights, prohibiting unlawful discrimination in employment. Contractor's deliberate, willful, or repeated failure to comply with all applicable provisions of the Illinois Human Rights Act, as determined by the Illinois Human Rights Commission or a court of competent jurisdiction, including specifically, provisions related to sexual harassment, or applicable rules and regulations promulgated thereunder, may result in a determination that the Contractor is ineligible for future contracts with the Village or any of its political subdivisions or municipal corporations, and this Agreement may be canceled or voided in whole or in part and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation; provided that the provisions for the termination of this Agreement shall be followed, Contractor is given a thirty (30) day period in which to cure any non-compliance or violations, and an opportunity to be heard by the board of trustees of the Village or similar entity has been given given.
- b. **Drug-free Workplace Act (30 ILCS 580/1, et. seq.).** All parties must comply with all of the provisions of the Drug-free Workplace Act, which are applicable to the Contractor. Knowing or repeated false certification or violation of the requirements of the Drug-free Workplace Act as determined by the Village's Board of Trustees or similar entity may result in sanctions including, but not limited to, termination of this Agreement.
- c. **Freedom of Information Act (5 ILCS 140/1 et. seq.).** Applications, program reports and other information obtained by the Village pursuant to this Agreement shall be administered in accordance with the Freedom of Information Act.
- d. **Educational Loan Default Act (5 ILCS 385/3).** The Contractor certifies that this Agreement is not in violation of the Educational

Loan Default Act prohibiting certain contracts to individuals who are in default on an educational loan.

- e. **Americans with Disabilities Act.** As a condition of receiving this Agreement, the Contractor certifies that services and activities provided under this Agreement comply and will continue to comply with The Americans with Disabilities Act (hereinafter "ADA") (42 U.S.C. 12101 et. seq.) and the regulations there under (28 CFR 35.130).

The Village shall not require the Contractor to perform any act which is contrary to the aforesaid and the Contractor shall use its best efforts to prohibit its employees from performing any act which violate the aforesaid acts and will take prompt remedial action to rectify or resolve any such violations.

The Contractor shall maintain all such licenses and all others as may be required by law during the term of this Agreement and will furnish a copy of each license and license renewal to the Village upon request. For purposes of any defenses or immunities to claims and liabilities to third parties that the Village and/or its employees may be entitled under applicable laws, the parties agree that, to the extent permitted by law, the Contractor will be deemed the agent of the Village or standing in the shoes of the Village with respect to such defenses and immunities available to the Village.

ARTICLE 13: Indemnification.

It is expressly understood and agreed that each party shall, to the extent permitted by law, defend, indemnify, save, and hold harmless the other, its affiliates, successors and assigns, and their respective present and former agents, officers, volunteers, and employees from any and all claims, liabilities, obligations, debts, charges, settlements or judgments (including attorneys' fees) arising from death, illness, physical injuries or property damage to any third party or the other party's present and former agents, officers, volunteers, and employees, including but not limited to any and all employment-related causes of action, attributable to the negligent acts or omissions of the other party, its agents, officers, and employees while engaged in the performance of duties under this Agreement . In addition, Village shall, to the extent permitted by law, defend, indemnify, save, and hold harmless Contractor, its affiliates, successors and assigns, and their respective present and former agents, officers, volunteers, and employees from any and all claims, liabilities, obligations, debts, charges, settlements or judgments (including attorneys' fees) attributable to the directions of the Village's Board of Trustees or Mayor, its agents, officers, and employees while engaged in their functions as Board of Trustees or Mayor.

No party shall have any obligation under this Article 13 with respect to liabilities caused by the gross negligence, reckless, fraudulent or deliberately

dishonest conduct, or intentional misconduct of the other party seeking indemnification; and in the event that a final determination that such claims or liabilities resulted from such party's gross negligence, reckless, fraudulent or deliberately dishonest conduct, or intentional misconduct is made by a court of competent jurisdiction, the indemnified party shall immediately refund such monies and expenses paid pursuant to this Article.

Neither party shall be obligated to indemnify the other party for any claim or liability: (a) involving a claim by one party against the other party; (b) to the extent prohibited by law; (c) to the extent the party seeking indemnification receives indemnification or insurance coverage from any other source. Provided that a party is not in breach of its indemnification obligations hereunder, no party being indemnified shall settle or compromise any claim subject to indemnification hereunder without the consent, of the party providing such indemnification.

Notwithstanding the above paragraph, neither party shall be liable to the other for indemnification for, and each party hereby releases the other from, any liability for punitive, exemplary and consequential damages which may be suffered by such party arising directly or indirectly out of the performance of this Agreement, including but not limited to the loss of use, loss of profits or business interruption (collectively, the "excluded damages"); provided that amounts owed under Article 6 shall not be deemed excluded damages.

This indemnification obligation shall be deemed to contractual in nature and shall survive any termination of this Agreement.

ARTICLE 15: Confidentiality.

Trade secrets and confidential information that may be received by any party or its employees, directly or indirectly, that are exempt from public disclosure under applicable laws shall remain the property of the disclosing party and shall be kept confidential by the party to whom such trade secrets or confidential information was disclosed. Such information will be utilized only for the purposes of carrying out the services and purposes of this Agreement, and each party to which such information is disclosed shall cause each of its employees to comply with the foregoing. Upon termination of this Agreement, each party agrees to surrender to the disclosing party any and all trade secrets, confidential information, material or tangible items or written information supplied by the disclosing party. The obligations of this Article will survive the termination or expiration of this Agreement.

ARTICLE 16: Publicity.

The Contractor shall not without the prior written consent of the Village: (a) refer to, identify, or use the name or any trade name or trademark of the Village or any of its employees in any advertising or communications to the public by the Contractor made in any form; (b) make publicity releases, promotional or marketing

materials, announcements, customer listings, testimonials, or advertising regarding the Village or any of its employees, this Agreement, the services or any related activities, or (c) take any photographs, video or other recordings of the property of the Village or any of its employees.

ARTICLE 17: Non-Solicitation Agreement.

The parties agree that neither party shall knowingly directly or indirectly solicit the other party's personnel for employment during the term of this Agreement and for a period of six (6) months after this Agreement ends for any reason without prior written approval from the other party. This does not preclude either party from hiring personnel when personnel terminated their employment without solicitation of the other party and directly approaches the other party for employment.

ARTICLE 18: Force Majeure.

Neither party shall be liable for any delay in delivery or nonperformance in whole of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control, including, without limitations, acts of God or public enemy, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the non-performing party shall promptly notify the other party of such event and use reasonable efforts to remedy its inability to perform.

ARTICLE 19: Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 20: Notices

All notices provided for or permitted herein shall be in writing and shall be delivered personally sent by a national overnight courier service, or sent by United States certified or registered mail, postage prepaid, return receipt requested, directed to the parties at the following addresses or to such address as any party shall designate by notice delivered or sent in the above manner. If a notice is sent by mail, it shall be deemed to have been received by the addressee two (2) days after the post marked date which it bears.

Contractor:

Michael G. Tillman
Vice President
Municipal Management Services, Inc.
395 West Lake Street

Elmhurst, Illinois 60126

Village:

Mayor Todd C. Matichak
Village of Elwood
401 E. Mississippi Street
Elwood, IL 60421

ARTICLE 21: Entire Agreement and Assignment.

This Agreement contains the entire agreement and understanding between the parties in regard to the subject matter hereof; it supersedes and replaces all prior agreements, negotiations, and arrangements concerning its subject matter; and this Agreement is not subject to modification, alteration or amendment, except by further written Agreement signed by all parties. No waiver of any provision shall constitute a waiver of any other provision, nor shall any waiver be deemed continuing unless otherwise expressly so provided in writing by the party against which the waiver is asserted

The Contractor may use sub-contractors to provide the personnel necessary to its obligations under this Agreement; provided that the Contractor agrees that it will require its sub-contractors and agents to make the same covenants and agreements contained in this Agreement. Subject to the preceding sentence, neither the Contractor nor the Village may assign this Agreement or its obligations without the other party's prior written consent that shall not be unreasonably withheld, provided that the Contractor may utilize the employees or contractors of third parties to provide the Village with qualified personnel without obtaining the prior written consent of the Village. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

ARTICLE 22: Governing Law.

This Agreement and the parties' relationship shall be construed in accordance with, and governed by the laws of the State of Illinois without regard to applicable conflict of law principles. In the event of any dispute between the parties, the prevailing party shall be entitled to its reasonable attorney fees and costs. All disputes relating to or arising out of this Agreement or the parties' relationship shall be resolved exclusively in the federal and state courts located in the County of DuPage, Illinois, and the parties hereby waive all objections to personal jurisdiction, venue, or forum non-conveniens therein.

ARTICLE 23: Severability.

If any portion of this Agreement is determined to be invalid by subsequent passage of law or court interpretation, the court or other tribunal may "blue pencil" or revise said portion so that it is enforceable to the fullest extent permitted by law or, if such revision is deemed impermissible, that portion shall be removed from

this Agreement. Where there is no “blue penciling”, the parties agree to attempt in good faith to renegotiate the problematic provision to the mutual satisfaction of the parties. In the event the parties are not able to mutually agree on modification of the problematic provision, then either party may terminate this Agreement upon thirty (30) days written notice to the other party if the terminating party has a good faith belief based on the advice of legal counsel that the problematic provision creates an unfavorable exposure under applicable laws. All other portions of this Agreement not modified pursuant to this article shall remain in full force and effect.

ARTICLE 24: Authority.

The Contractor represents that this Agreement is executed pursuant to approval of its President, and the Village represents that this Agreement is executed pursuant to resolution of its Board of Trustees.

ARTICLE 25: Headings.

The headings and subheadings in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

ARTICLE 26: HIPAA Privacy and Security.

Contractor's employees on-site at Village may receive or have access to protected health information (“PHI”) as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. 160.103 and any amendments thereto. Village acknowledges that Contractor's employees on-site shall be designated and treated by Village as a member of Village's workforce rather than as a business associate under the standards for privacy of PHI under HIPAA. As allowed under HIPAA, Village makes this workforce designation because it has determined: Contractor's on-site employees shall have his/her primary duty stations on-site at Village; Contractor's on-site employees for purposes of PHI will be under the direct control of Village; Contractor's on-site employees do not have access to, receive, or transmit PHI outside of Village's managed technology service systems, or create or maintain PHI in the performance of services under this Agreement.

At any time one of the aforementioned factors ceases to exist, the parties shall re-evaluate the workforce member designation. If the parties determine that the workforce member designation is no longer applicable and a business associate agreement (BAA) is necessary, the parties shall enter into a BAA within thirty (30) days of such determination containing terms and conditions the parties mutually require and compliant with HIPAA and until a BAA is executed, Contractor's employees shall not have any access to PHI.

The parties acknowledge that Contractor and its employees located off-site

do not have access to receive, or transmit PHI, or create or maintain PHI in the performance of services under this Agreement. If any off-site employees of Contractor need access to PHI, Contractor shall provide written notice of same to Village whereupon the parties shall have thirty (30) days from date of notice within which to enter into a BAA containing terms and conditions the parties mutually require and compliant with HIPAA.

Village has relied on the definitions of workforce member and business associate in 45 CFR 160.103 in effect as of the execution date of this Agreement and on sub-regulatory guidance issued by the federal Office of Civil Rights. If at any time the definitions or sub-regulatory guidance are modified such that the on-site employees can no longer be designated as workforce members, Village may terminate the workforce member designation upon sixt (60) days' prior written notice to Contractor. Until a BAA is executed, Contractor's on-site employees shall not have any access to PHI and the Parties shall attempt to negotiate and enter into a BAA containing terms and conditions the Parties mutually require and compliant with HIPAA.

As members of Village's workforce, the Contractor's on-site employees shall: abide by Village's written HIPAA policies and procedures, subject to the limitations set forth below; carry out their obligations necessary for the performance of services in compliance with HIPAA as a workforce member; and attend Village's HIPAA trainings.

Contractor's on-site employees shall also undergo Contractor's HIPAA training.

IN WITNESS WHEREOF: the parties have executed this Agreement to be effective on the date first stated above.

Village of Elwood

Todd Matichak, Mayor

Date

MUNCIPAL MANAGMENT SERVICES, INC.

Michael G. Tillman, Vice President

Date

Village Administrator Job Description

Supervised by:

Village Council & Municipal Management Services, Inc.

Supervises:

Directly supervises the Clerk/Treasurer, Department Heads, and
Indirectly supervises all other employees.

FLSA Status:

Exempt (Salary)

General Summary:

As Chief Administrative Officer of the Village, plans, develops, and implements a diverse range of Village services to meet policy directives and community needs. Oversees the organization and direction of all Village departments and acts as Village Personnel Director.

Essential Duties and Job Functions:

An employee in this position may be called upon to do any or all of the following essential functions. These examples do not include all of the duties which the employee may be expected to perform. To perform this job successfully, an individual must be able to perform each essential function satisfactorily.

1. Oversees the general operations of all Village departments and activities. Initiates studies and monitors operations to ensure quality services are provided in an efficient and timely manner.
2. Recommends policies and programs to the Village Council. Provides information to the Council to aide in its deliberations. Implements policies set forth by the Council.
3. Develops long-range plans and management strategies to realize goals in accordance with Council directives, community needs, demographic trends, and Village vision. Assesses operational costs, analyzes administrative and capital needs and makes appropriate recommendations.
4. Represents the Village at local, regional, and state meetings and conferences. Negotiates contracts and agreements on behalf of the Village. Presents the official Village position on issues related to finances and operations.
5. Responds to inquiries, resolves citizen complaints, and recommends remedial action related to Village policies and services. Meets with citizens and community groups to address concerns and participates in civic activities as appropriate.
6. Supervises all Village employees either directly or through department heads. Provides overall direction for the selection, training, recognition, discipline, and discharge of all Village employees. Develops, recommends, and enforces personnel policies. Negotiates and administers labor agreements.
7. Serves as the Village's legislative coordinator. Stays current of proposed changes in legislation that may impact the Village. Communicates Village needs to State and Federal officials.

8. Oversees the development of a five-year capital improvement program. Monitors capital needs and determines appropriate financing mechanisms for larger purchases and projects.
9. Oversees the development of budget requests, financial plans, and forecasts, and preparation of the annual budget. Administers fiscal policy, ensures the proper administration of the budget, and keeps the Village Council fully apprised of the Village's present financial condition and future needs.
10. Sets the agenda for and attends all Village Council meetings. Performs research, recommends policies and programs, enforces ordinances, and implements policy as set forth by the Council. Attends meeting of various boards, authorities, associations, and commissions as required.
11. Acts as spokesperson for the Village. Represents the Village to various individuals, entities, agencies, and other governmental units. Responds to inquiries from the public, the media, and others. Communicates the Village's interests and presents the Village's official position on issues.
12. Coordinates Village operations and activities with other governmental units. Participates in the negotiations and administration of cooperative agreements, mutual aid compacts, or other contracts.
13. Prepares grant proposals and consults with granting agencies in securing and administering grants. Completes requisite reporting and paperwork.
14. Negotiates contracts and agreements on behalf of the Village. Enforces the terms and conditions of all contracts to which the Village is a party. Supervises all special projects.
15. Develops a communication and marketing plan for both external and internal audiences. Including, but not limited to, development and maintenance of the Village web site and publication of a quarterly newsletter.
16. Performs related work as required.

Hours of Work

- Monday through Friday
- 8:30AM – 5:00PM
- Obligatory attendance at meetings outside of standard operating hours, multiple times a month.
- Required to respond in case of emergency on a 24-hour basis.

Required Knowledge, Skills, Abilities and Minimum Qualifications:

The requirements listed below are representative of the knowledge, skills, abilities and minimum qualifications necessary to perform the essential functions of the position. Reasonable accommodations may be made to enable individuals with disabilities to perform the job.

- A Bachelor's Degree in public administration, business administration, finance, or related field, and five years' experience of progressively responsible municipal management experience or equivalent.
- Thorough knowledge of the Jaws, ordinances, and regulations pertaining to municipal operations management, budgeting and financial administration, and public information.
- Considerable knowledge of the professional principles, practices, and procedures of public administration.
- A valid State of Illinois Vehicle Operator's License.
- Knowledge of municipal financial and personnel management, contract negotiation, and economic development.
- Knowledge of public relations practices and marketing.

- Skill in compiling and evaluating complex data and formulating policy and service recommendations.
- Skill in responding to public inquiries and internal requests with a high degree of diplomacy and professionalism.
- Skill in managing diverse programs, services, and personnel.
- Ability to establish effective working relationships use good judgment, initiative, and resourcefulness when dealing with citizens, elected officials, employees, other governmental agencies, and municipal professionals.
- Ability to maintain records and prepare comprehensive reports.
- Ability to effectively communicate and present ideas and concepts orally and in writing
- Ability to work effectively under stress and changes in work priorities.
- Ability to attend meetings at times outside of normal business hours, travel to other locations, and respond to emergencies on a 24-hour basis.
- Ability to effectively train, lead and motivate employees, and supervise and evaluate the work of others.

Physical Demands and Work Environment:

The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of the job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to communicate with others in person and on the telephone. The employee is frequently required to review and produce written and electronic documents.

The employee must occasionally lift and/or move items of light or medium weight. Specific vision abilities required by this job include close vision, color vision, and ability to adjust focus. The employee is frequently required to travel to other locations within and outside the Village, and use hands to finger, handle, or feel. The employee is regularly required to stand and walk. The employee is frequently required to attend meetings and make public presentations.

While performing the duties of this job, the employee regularly works in a business office setting. The noise level in the work environment is usually quiet, but can become loud in field situations. The employee occasionally works in other areas of the Village and may be exposed to adverse weather conditions, fumes, airborne particles, or other environmental situations.

Marian Gibson

From: Tillman, Mike
Sent: Thursday, June 29, 2017 7:28 AM
To: Marian Gibson
Subject: Re: Renewal of Municipal Management Services Contract for Village Administrator Position - Marian Gibson

Hi Marian,

Thanks for letting me know. I will inform Mayor Matichak of same. Has there been any discussion about the renewal of the contract?

Mike

Sent from my iPhone

On Jun 29, 2017, at 7:23 AM, Marian Gibson <marian.gibson@villageofelwood.com<<mailto:marian.gibson@villageofelwood.com>>> wrote:

Thanks Mike it is not necessary for the board to provide a wage adjustment.
Sincerely,

Marian T. Gibson, ICMA-CM
Village Administrator
Village of Elwood
401 E. Mississippi
Elwood, IL 60421
(815) 424-1095 Direct
(815) 509-2282 Cell
Email marian.gibson@villageofelwood.com<<mailto:marian.gibson@villageofelwood.com>>

On Jun 27, 2017, at 3:25 PM, Tillman, Mike <MTillman@norcomm911.com<<mailto:MTillman@norcomm911.com>>> wrote:

Hi Marian,

Strictly as an FYI, please see the attached and the below E-Mail. Please let me know if you have any questions or concerns.

Mike

From: Tillman, Mike
Sent: Tuesday, June 27, 2017 3:24 PM
To: 'mayor.matichak@villageofelwood.com<<mailto:mayor.matichak@villageofelwood.com>>'<mayor.matichak@villageofelwood.com<<mailto:mayor.matichak@villageofelwood.com>>>
Subject: Renewal of Municipal Management Services Contract for Village Administrator Position - Marian Gibson

Good afternoon Mayor Matichak,

I met with you back on May 18th, 2017 to introduce myself as the Village's representative from Municipal Management Services, Inc. which is the firm that is currently under contract by the Village to provide the Village with a full-time Village Administrator. Attached for your review is a current copy of our agreement with the Village, which is due to expire on August 28, 2017. As we discussed when we last met, I told you that I would remind you towards the end of June that the contract is due for renewal. Just checking in with you to determine our next steps. Would you like for me to prepare an amendment to the current agreement to extend the terms of the agreement? If yes, do you want to provide the Marian with a wage adjustment?

I'm willing to meet with you in person to further discuss or we can schedule a call, whichever is more convenient for you. My availability is as follows, please me let me know which works best for you:

- 1) Friday 6/30 any time between 10:00AM – 4:00PM
- 2) Wednesday 7/5 any time between 10:00AM-6:00PM
- 3) Thursday 7/6 any time between 1:00PM- 6:00PM
- 4) Friday July 7th any time between 10:00AM – 4:00PM
- 5) Thursday 7/13 any time
- 6) Friday 7/14 any time

Again, please let me know which date and time works best for you and whether you would like to meet in person or discuss over the phone.

Sincerely,

Mike

Michael G Tillman, RPL | Vice President
Municipal Management Services, Inc.
395 W. Lake St | Elmhurst, IL 60126
Phone: 630-530-2991 | Direct Line: 630-903-2480
Wireless: 630-596-7403 | Direct Fax: 630-903-2809

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Municipal Management Services, Inc.) and the recipient(s) named above. If you are not the recipient, the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any review, dissemination, distribution, printing or copying of this email message and/or any attachments is strictly prohibited. If you have received this transmission in error, we ask that you permanently delete this email along with any attachments and please notify the sender immediately at 1-800-832-2000

Marian Gibson

From: Tillman, Mike
Sent: Tuesday, June 27, 2017 3:25 PM
To: Marian T. Gibson (marian.gibson@villageofelwood.com)
Subject: FW: Renewal of Municipal Management Services Contract for Village Administrator Position - Marian Gibson
Attachments: MMS Village of Elwood 8-29-16.pdf

Hi Marian,

Strictly as an FYI, please see the attached and the below E-Mail. Please let me know if you have any questions or concerns.

Mike

From: Tillman, Mike
Sent: Tuesday, June 27, 2017 3:24 PM
To: 'mayor.matichak@villageofelwood.com' <mayor.matichak@villageofelwood.com>
Subject: Renewal of Municipal Management Services Contract for Village Administrator Position - Marian Gibson

Good afternoon Mayor Matichak,

I met with you back on May 18th, 2017 to introduce myself as the Village's representative from Municipal Management Services, Inc. which is the firm that is currently under contract by the Village to provide the Village with a full-time Village Administrator. Attached for your review is a current copy of our agreement with the Village, which is due to expire on August 28, 2017. As we discussed when we last met, I told you that I would remind you towards the end of June that the contract is due for renewal. Just checking in with you to determine our next steps. Would you like for me to prepare an amendment to the current agreement to extend the terms of the agreement? If yes, do you want to provide the Marian with a wage adjustment?

I'm willing to meet with you in person to further discuss or we can schedule a call, whichever is more convenient for you. My availability is as follows, please let me know which works best for you:

- 1) Friday 6/30 any time between 10:00AM – 4:00PM
- 2) Wednesday 7/5 any time between 10:00AM-6:00PM
- 3) Thursday 7/6 any time between 1:00PM- 6:00PM
- 4) Friday July 7th any time between 10:00AM – 4:00PM
- 5) Thursday 7/13 any time
- 6) Friday 7/14 any time

Again, please let me know which date and time works best for you and whether you would like to meet in person or discuss over the phone.

Sincerely,

Mike

Michael G Tillman, RPL | Vice President
Municipal Management Services, Inc.

395 W. Lake St | Elmhurst, IL 60126

Phone: 630-530-2991 | Direct Line: 630-903-2480

Wireless: 630-596-7403 | Direct Fax: 630-903-2809

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Marian Gibson

From: Tillman, Mike
Sent: Tuesday, May 16, 2017 4:02 PM
To: Marian Gibson
Subject: FW: Village of Elwood - Village President Todd C. Matichak

FYI

From: Tillman, Mike
Sent: Tuesday, May 16, 2017 4:02 PM
To: 'Julie Friebele' <julie.friebele@villageofelwood.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Hi Julie,

Just to confirm and also to follow up on our telephone conversation earlier in the day, I will be at the Elwood Village hall on Thursday 5/18 at 5:00PM to meet with Mayor Matichak.

Please do not hesitate to call me if you have any questions.

Sincerely,

Mike

Michael G Tillman, RPL | Vice President
Metro Paramedic Services, Inc.
NORCOMM Public Safety Communications, Inc.
Municipal Management Services, Inc.
Paramedic Billing Services, Inc.
395 W. Lake St | Elmhurst, IL 60126
Phone: 630-530-2991 | Direct Line: 630-903-2480
Wireless: 630-596-7403 | Direct Fax: 630-903-2809
mtillman@metroparamedics.com | <http://www.metroparamedics.com>
mtillman@norcomm911.com | <http://www.norcomm911.com>

From: Julie Friebele [mailto:julie.friebele@villageofelwood.com]
Sent: Tuesday, May 16, 2017 1:41 PM
To: Tillman, Mike <MTillman@norcomm911.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Hi Mike,

Mayor Matichak would like to know if you are available to meet with him on May 18th at 5:00 pm at the Elwood Village Hall? Please advise as soon as possible so I may confirm the meeting.

Thank you,

Julie Friebele
Acting Executive Assistant, Village Clerk
Village of Elwood
401 E. Mississippi Avenue
Elwood, IL 60421
815-424-1079 Fax 815-423-6861

From: Tillman, Mike [mailto:MTillman@norcomm911.com]
Sent: Wednesday, May 10, 2017 3:45 PM
To: Julie Friebele <julie.friebele@villageofelwood.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Hi Julie,

Thank you very much for offering to assist me, I greatly appreciate it. I am available on the following dates and times, please let me know which date/time works best for President Matichak:

1. Monday 5/15/17 any time after 10:00AM
2. Tuesday 5/16/17 any time after 1:00PM
3. Wednesday 5/17 any time after 10:00AM
4. Thursday 5/18/17 any time after 3:00PM – Note I will be in the Elwood area in this date and time for a meeting with a neighboring client.
5. Friday 5/19/17 any time after 10:00AM
6. Wednesday 5/24/17 any time after 10:00AM
7. Wednesday May 31st any time after 10:00AM

Julie, I presume that President Matichak is a part-time Mayor and that he also likely works a full-time job during the day. Therefore, if it is more convenient for me to meet with President Matichak during the evening on any of the above dates and times, that is fine by me. Also, I could meet on Saturday 5/13 or 5/20 if that works better for President Matichak.

In advance of the meeting and so that President Matichak knows why I am requesting to meet with him.... Our firm, Municipal Management Services, has a contract with the Village of Elwood to provide the Village with a Village Administrator, currently Marian Gibson. I felt it was prudent that I meet with President Matichak so that I can review with him our contract and our budget for the contract and answer any questions he may have. I've attached a copy of our contract to this E-Mail for his review.

Thank you again for your assistance, I greatly appreciate it! I am very much looking forward to meeting with President Matichak.

Sincerely,

Mike

Michael G Tillman, RPL | Vice President
Metro Paramedic Services, Inc.
NORCOMM Public Safety Communications, Inc.
Municipal Management Services, Inc.

Paramedic Billing Services, Inc.
395 W. Lake St | Elmhurst, IL 60126
Phone: 630-530-2991 | Direct Line: 630-903-2480
Wireless: 630-596-7403 | Direct Fax: 630-903-2809
mtillman@metroparamedics.com | <http://www.metroparamedics.com>
mtillman@norcomm911.com | <http://www.norcomm911.com>

From: Julie Friebel [mailto:julie.friebel@villageofelwood.com]
Sent: Wednesday, May 10, 2017 1:53 PM
To: Tillman, Mike <MTillman@norcomm911.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Either way would be perfectly acceptable. If you prefer to schedule through me, please provide me with your availability, I would be happy to assist you.

Thank you,

Julie Friebel
Acting Executive Assistant, Village Clerk
Village of Elwood
401 E. Mississippi Avenue
Elwood, IL 60421
815-424-1079 Fax 815-423-6861

From: Tillman, Mike [mailto:MTillman@norcomm911.com]
Sent: Wednesday, May 10, 2017 12:38 PM
To: Julie Friebel <julie.friebel@villageofelwood.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Thank you very much, Ms. Friebel, I greatly appreciate. I would like to schedule a meeting with President Matichak; Should I do so by scheduling through you or do you recommend that I personally contact President Matichak to coordinate?

Mike

Michael G Tillman, RPL | Vice President
Metro Paramedic Services, Inc.
NORCOMM Public Safety Communications, Inc.
Municipal Management Services, Inc.
Paramedic Billing Services, Inc.
395 W. Lake St | Elmhurst, IL 60126
Phone: 630-530-2991 | Direct Line: 630-903-2480
Wireless: 630-596-7403 | Direct Fax: 630-903-2809
mtillman@metroparamedics.com | <http://www.metroparamedics.com>
mtillman@norcomm911.com | <http://www.norcomm911.com>

From: Julie Friebele [<mailto:julie.friebele@villageofelwood.com>]

Sent: Wednesday, May 10, 2017 10:48 AM

To: Tillman, Mike <MTillman@norcomm911.com>

Subject: Village of Elwood - Village President Todd C. Matichak

Good Morning Mr. Tillman,

This email is in response to your request for the contact information of the Village of Elwood's Village President.

Todd C. Matichak

Email: mayor.matichak@villageofelwood.com

Cell: 815-370-5649

If you require additional assistance, please do not hesitate to contact me.

Thank you and enjoy your day,

Julie Friebele

Acting Executive Assistant, Village Clerk

Village of Elwood

401 E. Mississippi Avenue

Elwood, IL 60421

815-424-1079 Fax 815-423-6861

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you have received this transmission in error, we ask that you permanently delete this email along with any attachments and please notify the sender immediately at 1-800-832-2000

Marian Gibson

From: Tillman, Mike
Sent: Tuesday, May 16, 2017 9:32 AM
To: Marian Gibson
Subject: FW: Village of Elwood - Village President Todd C. Matichak
Attachments: MMS Village of Elwood 8-29-16.pdf

FYI

From: Tillman, Mike
Sent: Wednesday, May 10, 2017 3:45 PM
To: 'Julie Friebele' <julie.friebele@villageofelwood.com>
Subject: RE: Village of Elwood - Village President Todd C. Matichak

Hi Julie,

Thank you very much for offering to assist me, I greatly appreciate it. I am available on the following dates and times, please let me know which date/time works best for President Matichak:

- 1) Monday 5/15/17 any time after 10:00AM
- 2) Tuesday 5/16/17 any time after 1:00PM
- 3) Wednesday 5/17 any time after 10:00AM
- 4) Thursday 5/18/17 any time after 3:00PM – Note I will be in the Elwood area in this date and time for a meeting with a neighboring client.
- 5) Friday 5/19/17 any time after 10:00AM
- 6) Wednesday 5/24/17 any time after 10:00AM
- 7) Wednesday May 31st any time after 10:00AM

Julie, I presume that President Matichak is a part-time Mayor and that he also likely works a full-time job during the day. Therefore, if it is more convenient for me to meet with President Matichak during the evening on any of the above dates and times, that is fine by me. Also, I could meet on Saturday 5/13 or 5/20 if that works better for President Matichak.

In advance of the meeting and so that President Matichak knows why I am requesting to meet with him.... Our firm, Municipal Management Services, has a contract with the Village of Elwood to provide the Village with a Village Administrator, currently Marian Gibson. I felt it was prudent that I meet with President Matichak so that I can review with him our contract and our budget for the contract and answer any questions he may have. I've attached a copy of our contract to this E-Mail for his review.

Thank you again for your assistance, I greatly appreciate it! I am very much looking forward to meeting with President Matichak.

Sincerely,

Mike

**Michael G Tillman, RPL | Vice President
Metro Paramedic Services, Inc.
NORCOMM Public Safety Communications, Inc.**

Municipal Management Services, Inc.

Paramedic Billing Services, Inc.

395 W. Lake St | Elmhurst, IL 60126

Phone: 630-530-2991 | Direct Line: 630-903-2480

Wireless: 630-596-7403 | Direct Fax: 630-903-2809

mtillman@metroparamedics.com | <http://www.metroparamedics.com>

mtillman@norcomm911.com | <http://www.norcomm911.com>

From: Julie Friebele [<mailto:julie.friebele@villageofelwood.com>]

Sent: Wednesday, May 10, 2017 1:53 PM

To: Tillman, Mike <MTillman@norcomm911.com>

Subject: RE: Village of Elwood - Village President Todd C. Matichak

Either way would be perfectly acceptable. If you prefer to schedule through me, please provide me with your availability, I would be happy to assist you.

Thank you,

Julie Friebele
Acting Executive Assistant, Village Clerk
Village of Elwood
401 E. Mississippi Avenue
Elwood, IL 60421
815-424-1079 Fax 815-423-6861

From: Tillman, Mike [<mailto:MTillman@norcomm911.com>]

Sent: Wednesday, May 10, 2017 12:38 PM

To: Julie Friebele <julie.friebele@villageofelwood.com>

Subject: RE: Village of Elwood - Village President Todd C. Matichak

Thank you very much, Ms. Friebele, I greatly appreciate. I would like to schedule a meeting with President Matichak; Should I do so by scheduling through you or do you recommend that I personally contact President Matichak to coordinate?

Mike

Michael G Tillman, RPL | Vice President

Metro Paramedic Services, Inc.

NORCOMM Public Safety Communications, Inc.

Municipal Management Services, Inc.

Paramedic Billing Services, Inc.

395 W. Lake St | Elmhurst, IL 60126

Phone: 630-530-2991 | Direct Line: 630-903-2480

Wireless: 630-596-7403 | Direct Fax: 630-903-2809

mtillman@metroparamedics.com | <http://www.metroparamedics.com>

From: Julie Friebele [<mailto:julie.friebele@villageofelwood.com>]
Sent: Wednesday, May 10, 2017 10:48 AM
To: Tillman, Mike <MTillman@norcomm911.com>
Subject: Village of Elwood - Village President Todd C. Matichak

Good Morning Mr. Tillman,

This email is in response to your request for the contact information of the Village of Elwood's Village President.

Todd C. Matichak
Email: mayor.matichak@villageofelwood.com
Cell: 815-370-5649

If you require additional assistance, please do not hesitate to contact me.

Thank you and enjoy your day,

Julie Friebele
Acting Executive Assistant, Village Clerk
Village of Elwood
401 E. Mississippi Avenue
Elwood, IL 60421
815-424-1079 Fax 815-423-6861

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**MUNICIPAL MANAGEMENT SERVICES,
INC.**

**PERSONNEL SERVICES CONTRACT
FOR THE
Village of Elwood**

August 29, 2016 through August, 28, 2017

This Agreement made and entered into this 29th day of August 2016, by and between Municipal Management Services, Inc., an Illinois Corporation, (hereafter referred to as "Contractor"), and the Village of Elwood, an Illinois Municipal Corporation (hereinafter referred to as "Village"), together the Contractor and the Village are collectively referred to as the "parties").

WHEREAS, the Contractor is in the business of furnishing personnel to municipalities for various positions;

WHEREAS, the Village provides municipal services for residents of the Village;

WHEREAS, the Village wishes to out-source its Village Administrator position on an independent contractor basis in order to obtain the Contractor's services for Administration and Management of Village, and the Contractor wishes to provide such services on an independent contractor basis to the Village (the "Assignment"); and

WHEREAS, as used in the Agreement, the terms "personnel" and "employees" mean the Contractor's employees placed with the Village pursuant to this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, the parties agree as follows:

ARTICLE 1: Term.

The term of this Agreement shall be for a period of one (1) year commencing August 29, 2016 and ending August 28, 2017 ("Initial Term") unless cancelled earlier by written notice by either party or terminated by written notice of a breach of this Agreement or operation of law, in which case this Agreement will terminate immediately on the date of the written notice, unless such early cancellation or termination would give rise to liability to either party under the federal or state laws known as WARN Acts or similar laws, in which case such cancellation or termination shall be delayed so the parties can provide appropriate notices or take other steps to avoid liability under such laws as allocated under this Agreement or by operation of law. The Initial Term of this Agreement shall automatically renew for subsequent sixty (60) day terms ("Subsequent Terms) unless earlier terminated by written notice by either party sixty (60) days before the end of either the Initial Term or any Subsequent Term or written notice of a breach by either party or by operation of law or unless a new agreement is executed by the parties.

ARTICLE 2: Cancellation.

Either party to this Agreement may cancel this Agreement without cause upon providing the other party sixty (60) days' written notice prior to the expiration of the Initial Term or any Subsequent Term and this Agreement and the parties' obligations thereunder shall end at the end of such sixty (60) notice period. If one party shall commit a material breach of this Agreement, the other party shall provide a detailed written statement of the claimed material breach. The allegedly breaching party shall have five (5) business days to cure such breach, if curable, unless residents' safety forms the basis, in whole or in part, of the material breach, in which case, the breach must be cured within forty-eight (48) hours of notice of the breach. The acceptance of such cure shall not be unreasonably withheld. Where the cure has not been accepted, the Contractor shall have an opportunity to be heard by the Village's Board of Trustees or similar entity before any decision on termination or cancellation is made. Where the cure has not been accepted and opportunity to be heard has occurred, this Agreement shall terminate on the expiration date of the cure period or any extension given on the basis of the opportunity to be heard, unless the parties agree that additional time is necessary to ensure an orderly transfer of Village Administrator position service to ensure the safety of the citizens of the Village, but in no event shall such additional time extend for more than 30-days without agreement of both parties.

Upon termination of this Agreement, the Village's sole obligation to the Contractor shall be to remit any outstanding payments owed to the Contractor for services rendered up to and including the expiration date.

ARTICLE 3: Personnel Provided.

The Contractor shall utilize its best efforts to provide personnel identified below with the required skills, experience, and other qualifications for the Assignment, including but not limited to recruiting, interviewing, any applicable testing, performing background checks, selecting, hiring, disciplining, controlling, directing and terminating the personnel that it furnishes pursuant to this Agreement;

However, in no event does the Contractor guarantee the qualifications or fitness of any personnel provided by the Contractor for any particular purpose and in fact disclaims such guarantee, liability, or warranty to the fullest extent permitted by law.

- a. The Contractor shall provide one (1) full-time Village Administrator to the Village. The Village Asministrator shall be scheduled to work 40-50 hours per week as a Village Administrator. The Village Administrator shall operate under the direction and supervision of Contractor and in consultation with the Village Board of Trustees and Mayor.

- b. The Contractor shall assign replacement personnel, to be chosen in Contractor's discretion, to the Assignment in the event of long-term illness, or any other event that causes long-term absence of the regularly assigned Village Administrator. The Contractor shall take the same best efforts to ensure that replacement personnel have the same necessary qualifications that Contractor requires of the regularly assigned Village Administrator.
- c. If the employment of any assigned Contractor's employee is terminated with Contractor, the Contractor shall immediately notify the Village Board of Trustees and the Contractor shall provide a suitable replacement.
- f. Prior to beginning work on the Assignment, the Contractor shall take reasonable measures to require that all assigned personnel shall attend Contractor's orientation program at Contractor's facility and at Contractor's expense.
- i. Personnel provided pursuant to this Agreement shall be required to meet the Essential Duties, Job Functions, and possess the required Knowledge, Skills, Abilities and Minimum Qualifications as described in Exhibit A of this Agreement.
- k. The Village shall be solely responsible to provide Contractor's employees with use of the Village's facilities and vehicles while on duty so that Contractor's employees shall have ready access to perform its Assignment.

ARTICLE 4: Selection of Personnel.

In order to ensure the orderly and safe operation of Village pursuant to this Agreement and consistent with all legal authority, the provision and selection of personnel shall be as follows:

- a. The Village may request the Contractor to no longer assign any given Contractor's employee to the Village for any legal reason. Such request shall be made in writing and shall detail the reason(s) for the request. Upon receipt of such request, the Contractor shall conduct an immediate review and, after such review, if reassignment is deemed appropriate, Contractor shall make the determination as to whether or not to replace its employee with another qualified employee and shall provide a permanent replacement within a reasonable period. All temporary and permanent replacement Contractor's employees shall be selected in accordance with the

foregoing provisions of this Agreement. However, the power to hire and terminate personnel shall at all times reside with the Contractor.

- b. The Contractor shall conduct drug screenings and background checks on personnel assigned to perform services under this Agreement which may include a criminal screening to the extent permitted by law. To the extent that additional pre-employment testing or screening is requested by the Village or required by law, the Contractor will be solely responsible for implementing such pre-employment screening, and employment term screening, and will assemble all other required documentation for each applicant or personnel. The Contractor will furnish a true and correct copy of the results of the tests, screens, and all other required documentation, if requested, to the Village. The Contractor warrants that it has or will lawfully obtain all such tests, screens and other documentation and that it is authorized to furnish it under the terms of this Agreement.
- c. Contractor shall solely be responsible for recruiting, interviewing, testing, performing background checks, drug screenings, selecting, hiring, disciplining, controlling, directing and terminating the personnel that it furnishes pursuant to this Agreement.

ARTICLE 5: Duties.

In order to ensure the orderly and safe operation of Village pursuant to this Agreement and consistent with all authority, the duties of Contractor's personnel shall be as follows:

- a. Contractor's regular and replacement personnel employees assigned shall perform Village Administrator duties and any related operational matters as assigned by the Contractor in consultation with the Village's Board of Trustees or Mayor and in accordance with the job description contained in Exhibit A. All regular and replacement personnel serve under the supervision of the Contractor in consultation with the Village's Board of Trustees or Mayor. Operational matters exclude employment and disciplinary related matters which shall be under the purview of Contractor; personnel shall report to Contractor for all employment and disciplinary related matters of its employee.
- b. Contractor will maintain employment, training and certification records for Contractor's employees assigned to the Village.

ARTICLE 6: Consideration.

a. Year 1: In consideration for the services to be provided by Contractor to the Village pursuant to the provisions of this Agreement, the Village will pay Contractor the total sum of \$114,036.00 payable in twelve monthly installments of \$9,503.00, due and payable on the 28th day of each month, commencing September 1st, 2016, subject to adjustment pursuant to the terms of this Agreement.

If the Village Administrator opts to enroll in the Contractor's Health Benefit Package, Contractor shall charge an additional annual fee described below based on the health insurance package that is chosen by its employee:

• Silver Employee Only	\$8,012.54
• Silver Employee + 1	\$18,786.34
• Silver Family	\$28,495.70
• Gold Employee Only	\$8,740.08
• Gold Employee +1	\$20,450.22
• Gold Family	\$30,926.54

d. The parties agree that the fees set forth in Article 6(a) are based on their assumption that the personnel assigned to the Village will work the hours set forth in Article 3(a). If compensation to assigned personnel should vary during the term of this Agreement, the parties agree to re-negotiate the fees in good faith to reach a fair price that compensates Contractor for any increased costs (including but not limited to contributions to Contractor's Profit Sharing 401(k) plan and health insurance premiums) as well as a reasonable administrative fee.

e. The Contractor shall be solely responsible for:

- i. Compensating and providing the employment benefits set forth in this Agreement, if any;
- ii. Making all required deductions from compensation paid to the personnel and timely remitting such deductions and any required contributions from the Contractor to the appropriate government agency as required by law;
- iii. Complying with all applicable federal, state and local laws and regulations regarding the employment of such personnel.
- iv. The Contractor will properly and timely file all required reports and other information with the Internal Revenue Service,

Social Security Administration, and all applicable state and local tax agencies.

- v. The Contractor's personnel and employees shall not be entitled to participate in any of the Village's employee benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay, and other similar plans, programs and agreements, whether reduced to writing or not.
- vi. The Contractor will use its best efforts to ensure that each personnel assigned to the Assignment will be at least 18 years of age and either a United States citizen or an individual lawfully entitled to perform work. The Contractor shall be solely responsible for any audits, fines or other penalties resulting from its failure to fulfill the obligations of this paragraph and shall defend, protect, and hold harmless the Village, to the extent permitted by law, from such audits, fines or penalties described above.
- vii. The Village will promptly advise the Contractor in writing of any billing dispute or any other problem. The Village and the Contractor will identify and attempt to promptly resolve all billing disputes through face-to-face meetings between the Village and the Contractor's representative in charge of this account. If the parties are unable to resolve the dispute through face-to-face meetings, the parties agree to submit the dispute to a mediator agreed upon by the parties or in accordance with the rules of the JAMS, with each party bearing half of the mediation costs. The Village will pay the undisputed portion of billable transactions as set forth above.
- viii. The Contractor and the Village will promptly furnish to the other party such information that such other party may request to enable each of them to analyze the services and the activities of the other party and the personnel involved in the dispute.

ARTICLE 7: Limitation of Authority.

Contractor and its employees shall have the authority to provide services under this Agreement, make and implement day-to-day decisions that are necessary in the performance of its obligations herein, and render directions to all third parties in connection therewith. Notwithstanding anything contained herein to the contrary, in no event shall Contractor or its employees assigned to Village

pursuant to this Agreement have the right or authority, express or implied, to commit, bind or obligate the Village contractually or otherwise to any liability or agreement or to cause the Village to incur any obligation to any third party without the approval of the Village's Board of Trustees via a resolution or ordinance.

The parties agree that they shall not use the name, trademarks, or service marks of the other party for the purposes of advertising, sales promotion or other similar purposes without the prior written approval of the other party. Neither the Contractor nor the Village shall publicly announce or disclose the terms and conditions of this Agreement without the prior written approval of the other party, absent a legal obligation to do so or pursuant to a subpoena or legal process.

ARTICLE 8: Equipment.

In order to ensure the orderly and safe operation of Village consistent with all legal authority, the Village shall supply a Village owned vehicle for all regular and replacement personnel. The Village will be responsible for all repairs, insurance, maintenance and any other direct or indirect costs of Village vehicles. The vehicle, and any other equipment assigned to Contractor's employee, and all direct or indirect costs thereof shall not be a separate charge incurred by Contractor under this Agreement; the costs thereof have been taken into account by Contractor in setting forth the consideration in Article 6, and is inclusive of the consideration set forth in Article 6.

ARTICLE 9: Insurance.

Contractor shall provide:

- a. **Workers Compensation Insurance.** Contractor shall purchase, and upon request shall provide evidence that it has secured workers' compensation insurance for its employees in amounts required by Illinois law.
- b. **Professional and General Liability Insurance.** Contractor shall purchase, and upon request shall provide evidence that it has secured, for itself and its employees, professional and general liability insurance with a single limit of \$1,000,000 (one million dollars), and additional aggregate coverage of at least \$10,000,000 (ten million dollars).
- d. **Non-Owned, Owned and Hired Automobile Insurance.** Both Contractor and Village shall purchase, and upon request shall provide evidence that they have secured, coverage for Contractor and Contractor's employees for occurrences arising while Contractor's employees are driving Village's vehicles, with a minimum single limit of \$1,000,000 (one million dollars) per

occurrence, and additional aggregate coverage of at least \$2,000,000 (two million dollars). It is expressly understood and agreed by the parties that while an employee of Contractor is driving a vehicle owned by the Village, the Village's insurance shall be primary.

- e. To the extent permitted by law, if the Village has insurance or coverage that directly or indirectly covers the acts or omissions of the Contractor or its personnel in connection with their performance pursuant to this Agreement, the Village shall provide the Contractor with a certificate of insurance or other proof of coverage acceptable to the Contractor, and the Village agrees to cooperate in causing the Contractor and its personnel to be additional insured under such insurance or coverage, and immediately notify the Contractor in the event such insurance or coverage lapses, expires, or is otherwise terminated.

ARTICLE 10: Administration.

- a. The Contractor shall be responsible for processing all reports, as required under federal, state, or Village rules and regulations.
- b. If this Agreement or any provision or report prepared in accordance with this Agreement is subject to or requested by any governmental agency, the Contractor shall have primary responsibility for complying with such request and shall truthfully respond to all agency requests, with notice to the Village, to the extent such notice is permitted by law or the applicable agency, and the Contractor shall preserve such books and records, at a minimum, for the legally required time period.
- c. The Contractor shall keep adequate original records at the Contractor's principal place of business to allow the Village and its agents to obtain information regarding the personnel furnished and services rendered under this Agreement. The Village and its agents shall have the right to inspect such records and shall be given access to such records at any reasonable time upon the Village's request. This provision shall survive the termination of this Agreement. The Contractor shall maintain the records pertaining to the services rendered upon the behalf of the Village, at a minimum, during the term of this Agreement and for the legally required period.

ARTICLE 11: Relationship of the Parties.

- a. Notwithstanding anything to the contrary in this Agreement or elsewhere, the Contractor is an independent contractor with respect to the Village. There is no agency, employment relationship, partnership, or joint venture between the Contractor, its employees, and the Village and/or the Village's employees. No one connected with the Contractor, except in a writing signed by the chief executive of the Contractor, has any authority to make any binding promises or agreements contrary to the foregoing.
- b. Contractor's employees shall be, for all purposes, bona fide employees of Contractor and not of Village. Except as otherwise provided in this Agreement, all employment-related costs, benefits and expenses arising out of the relationship between Village and Contractor, including, but not limited to wages, state, local and federal taxes, benefits, insurance premiums, and contributions to insurance, pension, or other deferred compensation plans, including Social Security, unemployment insurance and workers' compensation obligations, shall be the sole responsibility of Contractor. Contractor's employees shall also be subject to all personnel policies and regulations applicable to Contractor's employees generally, including time off with or without pay and leaves of absence, including under the Family and Medical Leave Act or any similar state law. While Contractor's employees are providing services hereunder, the Village shall be responsible for maintaining a safe, healthy and non-discriminatory working environment in compliance with all applicable federal, state and local laws, regulations and ordinances. The Contractor and the Village agree that the Contractor is an independent contractor and shall be liable for its own actions. Neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined in this Agreement. The Contractor, including its employees, shall not be considered, entitled or eligible to participate in any benefits or privileges given or extended by the Village or be deemed an employee of Village for any purposes, including but not limited to, for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation and other employer contributions not specifically provided for in this Agreement. The Contractor shall retain the exclusive right to hire, discipline, compensate and terminate its employees pursuant to the Contractor's policies and procedures and consistent with the terms of this Agreement.

ARTICLE 12: Compliance with Law.

The parties agree to use their best efforts to adhere to all county, state and federal rules, regulations, codes, ordinances, and charters applicable, including but not limited to the following:

- a. **State of Illinois Anti-Discrimination Laws (775 ILCS 5/101/ et. seq.).** In carrying out the performance required under this Agreement, the parties agree to use their best efforts to comply with all applicable provisions of the Illinois Human Rights Act, and rules and regulations promulgated by the Illinois Department of Human Rights, prohibiting unlawful discrimination in employment. Contractor's deliberate, willful, or repeated failure to comply with all applicable provisions of the Illinois Human Rights Act, as determined by the Illinois Human Rights Commission or a court of competent jurisdiction, including specifically, provisions related to sexual harassment, or applicable rules and regulations promulgated thereunder, may result in a determination that the Contractor is ineligible for future contracts with the Village or any of its political subdivisions or municipal corporations, and this Agreement may be canceled or voided in whole or in part and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation; provided that the provisions for the termination of this Agreement shall be followed, Contractor is given a thirty (30) day period in which to cure any non-compliance or violations, and an opportunity to be heard by the board of trustees of the Village or similar entity has been given given.
- b. **Drug-free Workplace Act (30 ILCS 580/1, et. seq.).** All parties must comply with all of the provisions of the Drug-free Workplace Act, which are applicable to the Contractor. Knowing or repeated false certification or violation of the requirements of the Drug-free Workplace Act as determined by the Village's Board of Trustees or similar entity may result in sanctions including, but not limited to, termination of this Agreement.
- c. **Freedom of Information Act (5 ILCS 140/1 et. seq.).** Applications, program reports and other information obtained by the Village pursuant to this Agreement shall be administered in accordance with the Freedom of Information Act.
- d. **Educational Loan Default Act (5 ILCS 385/3).** The Contractor certifies that this Agreement is not in violation of the Educational Loan Default Act prohibiting certain contracts to individuals who are in default on an educational loan.

e. **Americans with Disabilities Act.** As a condition of receiving this Agreement, the Contractor certifies that services and activities provided under this Agreement comply and will continue to comply with The Americans with Disabilities Act (hereinafter "ADA") (42 U.S.C. 12101 et. seq.) and the regulations there under (28 CFR 35.130).

The Village shall not require the Contractor to perform any act which is contrary to the aforesaid and the Contractor shall use its best efforts to prohibit its employees from performing any act which violate the aforesaid acts and will take prompt remedial action to rectify or resolve any such violations.

The Contractor shall maintain all such licenses and all others as may be required by law during the term of this Agreement and will furnish a copy of each license and license renewal to the Village upon request. For purposes of any defenses or immunities to claims and liabilities to third parties that the Village and/or its employees may be entitled under applicable laws, the parties agree that, to the extent permitted by law, the Contractor will be deemed the agent of the Village or standing in the shoes of the Village with respect to such defenses and immunities available to the Village.

ARTICLE 13: Indemnification.

It is expressly understood and agreed that each party shall, to the extent permitted by law, defend, indemnify, save, and hold harmless the other, its affiliates, successors and assigns, and their respective present and former agents, officers, volunteers, and employees from any and all claims, liabilities, obligations, debts, charges, settlements or judgments (including attorneys' fees) arising from death, illness, physical injuries or property damage to any third party or the other party's present and former agents, officers, volunteers, and employees, including but not limited to any and all employment-related causes of action, attributable to the negligent acts or omissions of the other party, its agents, officers, and employees while engaged in the performance of duties under this Agreement. In addition, Village shall, to the extent permitted by law, defend, indemnify, save, and hold harmless Contractor, its affiliates, successors and assigns, and their respective present and former agents, officers, volunteers, and employees from any and all claims, liabilities, obligations, debts, charges, settlements or judgments (including attorneys' fees) attributable to the directions of the Village's Board of Trustees or Mayor, its agents, officers, and employees while engaged in their functions as Board of Trustees or Mayor.

No party shall have any obligation under this Article 13 with respect to liabilities caused by the gross negligence, reckless, fraudulent or deliberately dishonest conduct, or intentional misconduct of the other party seeking indemnification; and in the event that a final determination that such claims or liabilities resulted from such party's gross negligence, reckless, fraudulent or

deliberately dishonest conduct, or intentional misconduct is made by a court of competent jurisdiction, the indemnified party shall immediately refund such monies and expenses paid pursuant to this Article.

Neither party shall be obligated to indemnify the other party for any claim or liability: (a) involving a claim by one party against the other party; (b) to the extent prohibited by law; (c) to the extent the party seeking indemnification receives indemnification or insurance coverage from any other source. Provided that a party is not in breach of its indemnification obligations hereunder, no party being indemnified shall settle or compromise any claim subject to indemnification hereunder without the consent, of the party providing such indemnification.

Notwithstanding the above paragraph, neither party shall be liable to the other for indemnification for, and each party hereby releases the other from, any liability for punitive, exemplary and consequential damages which may be suffered by such party arising directly or indirectly out of the performance of this Agreement, including but not limited to the loss of use, loss of profits or business interruption (collectively, the "excluded damages"); provided that amounts owed under Article 6 shall not be deemed excluded damages.

This indemnification obligation shall be deemed to contractual in nature and shall survive any termination of this Agreement.

ARTICLE 15: Confidentiality.

Trade secrets and confidential information that may be received by any party or its employees, directly or indirectly, that are exempt from public disclosure under applicable laws shall remain the property of the disclosing party and shall be kept confidential by the party to whom such trade secrets or confidential information was disclosed. Such information will be utilized only for the purposes of carrying out the services and purposes of this Agreement, and each party to which such information is disclosed shall cause each of its employees to comply with the foregoing. Upon termination of this Agreement, each party agrees to surrender to the disclosing party any and all trade secrets, confidential information, material or tangible items or written information supplied by the disclosing party. The obligations of this Article will survive the termination or expiration of this Agreement.

ARTICLE 16: Publicity.

The Contractor shall not without the prior written consent of the Village: (a) refer to, identify, or use the name or any trade name or trademark of the Village or any of its employees in any advertising or communications to the public by the Contractor made in any form; (b) make publicity releases, promotional or marketing materials, announcements, customer listings, testimonials, or advertising regarding the Village or any of its employees, this Agreement, the services or any related

activities, or (c) take any photographs, video or other recordings of the property of the Village or any of its employees.

ARTICLE 17: Non-Solicitation Agreement.

The parties agree that neither party shall knowingly directly or indirectly solicit the other party's personnel for employment during the term of this Agreement and for a period of six (6) months after this Agreement ends for any reason without prior written approval from the other party. This does not preclude either party from hiring personnel when personnel terminated their employment without solicitation of the other party and directly approaches the other party for employment.

ARTICLE 18: Force Majeure.

Neither party shall be liable for any delay in delivery or nonperformance in whole of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control, including, without limitations, acts of God or public enemy, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the non-performing party shall promptly notify the other party of such event and use reasonable efforts to remedy its inability to perform.

ARTICLE 19: Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 20: Notices

All notices provided for or permitted herein shall be in writing and shall be delivered personally sent by a national overnight courier service, or sent by United States certified or registered mail, postage prepaid, return receipt requested, directed to the parties at the following addresses or to such address as any party shall designate by notice delivered or sent in the above manner. If a notice is sent by mail, it shall be deemed to have been received by the addressee two (2) days after the post marked date which it bears.

Contractor:

Michael G. Tillman
Vice President
Municipal Management Services, Inc.
395 West Lake Street
Elmhurst, Illinois 60126

Village:

Mayor William E. Offerman
Village of Elwood
401 E. Mississippi Street
Elwood, IL 60421

ARTICLE 21: Entire Agreement and Assignment.

This Agreement contains the entire agreement and understanding between the parties in regard to the subject matter hereof; it supersedes and replaces all prior agreements, negotiations, and arrangements concerning its subject matter; and this Agreement is not subject to modification, alteration or amendment, except by further written Agreement signed by all parties. No waiver of any provision shall constitute a waiver of any other provision, nor shall any waiver be deemed continuing unless otherwise expressly so provided in writing by the party against which the waiver is asserted

The Contractor may use sub-contractors to provide the personnel necessary to its obligations under this Agreement; provided that the Contractor agrees that it will require its sub-contractors and agents to make the same covenants and agreements contained in this Agreement. Subject to the preceding sentence, neither the Contractor nor the Village may assign this Agreement or its obligations without the other party's prior written consent that shall not be unreasonably withheld, provided that the Contractor may utilize the employees or contractors of third parties to provide the Village with qualified personnel without obtaining the prior written consent of the Village. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

ARTICLE 22: Governing Law.

This Agreement and the parties' relationship shall be construed in accordance with, and governed by the laws of the State of Illinois without regard to applicable conflict of law principles. In the event of any dispute between the parties, the prevailing party shall be entitled to its reasonable attorney fees and costs. All disputes relating to or arising out of this Agreement or the parties' relationship shall be resolved exclusively in the federal and state courts located in the County of DuPage, Illinois, and the parties hereby waive all objections to personal jurisdiction, venue, or forum non-conveniens therein.

ARTICLE 23: Severability.

If any portion of this Agreement is determined to be invalid by subsequent passage of law or court interpretation, the court or other tribunal may "blue pencil" or revise said portion so that it is enforceable to the fullest extent permitted by law or, if such revision is deemed impermissible, that portion shall be removed from this Agreement. Where there is no "blue penciling", the parties agree to attempt in good faith to renegotiate the problematic provision to the mutual satisfaction of the

parties. In the event the parties are not able to mutually agree on modification of the problematic provision, then either party may terminate this Agreement upon thirty (30) days written notice to the other party if the terminating party has a good faith belief based on the advice of legal counsel that the problematic provision creates an unfavorable exposure under applicable laws. All other portions of this Agreement not modified pursuant to this article shall remain in full force and effect.

ARTICLE 24: Authority.

The Contractor represents that this Agreement is executed pursuant to approval of its President, and the Village represents that this Agreement is executed pursuant to resolution of its Board of Trustees.

ARTICLE 25: Headings.

The headings and subheadings in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

ARTICLE 26: HIPAA Privacy and Security.

Contractor's employees on-site at Village may receive or have access to protected health information ("PHI") as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. 160.103 and any amendments thereto. Village acknowledges that Contractor's employees on-site shall be designated and treated by Village as a member of Village's workforce rather than as a business associate under the standards for privacy of PHI under HIPAA. As allowed under HIPAA, Village makes this workforce designation because it has determined: Contractor's on-site employees shall have his/her primary duty stations on-site at Village; Contractor's on-site employees for purposes of PHI will be under the direct control of Village; Contractor's on-site employees do not have access to, receive, or transmit PHI outside of Village's managed technology service systems, or create or maintain PHI in the performance of services under this Agreement.

At any time one of the aforementioned factors ceases to exist, the parties shall re-evaluate the workforce member designation. If the parties determine that the workforce member designation is no longer applicable and a business associate agreement (BAA) is necessary, the parties shall enter into a BAA within thirty (30) days of such determination containing terms and conditions the parties mutually require and compliant with HIPAA and until a BAA is executed, Contractor's employees shall not have any access to PHI.

The parties acknowledge that Contractor and its employees located off-site do not have access to receive, or transmit PHI, or create or maintain PHI in the performance of services under this Agreement. If any off-site employees of

Contractor need access to PHI, Contractor shall provide written notice of same to Village whereupon the parties shall have thirty (30) days from date of notice within which to enter into a BAA containing terms and conditions the parties mutually require and compliant with HIPAA.

Village has relied on the definitions of workforce member and business associate in 45 CFR 160.103 in effect as of the execution date of this Agreement and on sub-regulatory guidance issued by the federal Office of Civil Rights. If at any time the definitions or sub-regulatory guidance are modified such that the on-site employees can no longer be designated as workforce members, Village may terminate the workforce member designation upon sixt (60) days' prior written notice to Contractor. Until a BAA is executed, Contractor's on-site employees shall not have any access to PHI and the Parties shall attempt to negotiate and enter into a BAA containing terms and conditions the Parties mutually require and compliant with HIPAA.

As members of Village's workforce, the Contractor's on-site employees shall: abide by Village's written HIPAA policies and procedures, subject to the limitations set forth below; carry out their obligations necessary for the performance of services in compliance with HIPAA as a workforce member; and attend Village's HIPAA trainings.

Contractor's on-site employees shall also undergo Contractor's HIPAA training.

IN WITNESS WHEREOF: the parties have executed this Agreement to be effective on the date first stated above.

Village of Elwood


William Offerman, Mayor

7-20-2016

Date

MUNICIPAL MANAGEMENT SERVICES, INC.


Michael G. Tillman, Vice President

8/3/2016

Date