



Village of Winnetka

Village Council Regular Meeting

March 7, 2023 at 7:00 PM
Village Hall
510 Green Bay Road

AGENDA

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Quorum**
 - a. March 14, 2023 Study Session
 - b. March 21, 2023 Regular Meeting
 - c. Monday, April 3, 2023 Regular Meeting
- 4. Public Comments**
- 5. Reports**
- 6. Approval of Consent Agenda**
- 7. Consent Agenda**
 - a. Approval of Village Council Minutes
 - i. February 21, 2023 Regular Meeting
 - b. Approval of Warrant List Dated February 10, 2023 - February 23, 2023
 - c. Ordinance No. MC-03-2023: Amending Chapter 13.08 of the Winnetka Village Code Concerning Interconnection of Renewable Energy Sources (Adoption)
 - d. Ordinance No. M-04-2023: 232 Sheridan - GFA, Corner & Rear Yard Setback Variations (Adoption)
 - e. Resolution No. R-30-2023: Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits (Adoption)
 - f. Resolution No. R-31-2023: Approving an Intergovernmental Agreement with the Winnetka Foreign Fire Insurance Board for the Provision of Administrative Services (Adoption)
 - g. Resolution No. R-32-2023: Awarding a Contract to A. Lamp Concrete, Inc. for the Construction of Streetscape and Site Improvements for 93 Green Bay Road (Adoption)
 - h. Approval of Annual Outdoor Seating Area Permits (Adoption)
- 8. Ordinances and Resolutions**
 - a. Ordinance No. MC-04-2023: Amending the Winnetka Village Code Regarding the Class X Special Use Liquor Permit Classification (Introduction/Adoption)
 - b. Resolution No. R-33-2023: Waiving Bidding and Approving Change Order No. 1 to the Contract with Brock Industrial Services, LLC for Asbestos Abatement in Boiler #8 (Adoption)

- c. Resolution No. R-34-2023: Approving Change Order No. 1 to a Contract with Independent Mechanical Industries, Inc. for Tube Installation and Boiler Casing Replacement in Boiler #8 (Adoption)
- d. Ordinance No. MC-02-2023: Amending Chapter 9.12 of the Winnetka Village Code Concerning Firearm Regulations (Introduction)
- e. Ordinance No. MC-05-2023: Village Code Update - Lakefront Regulations (Introduction)

9. Old Business

10. New Business

11. Appointments

12. Closed Session

13. Adjournment

NOTICE

All agenda materials are available at villageofwinnetka.org (*Governance > Agendas & Minutes*); the *Reference Desk at the Winnetka Library*; or in the *Manager's Office at Village Hall (2nd floor)*.

The Village of Winnetka, in compliance with the Americans with Disabilities Act, requests that all persons with disabilities who require certain accommodations to allow them to observe and/or participate in this meeting or have questions about the accessibility of the meeting or facilities, contact the Village ADA Coordinator, 510 Green Bay Road, Winnetka, Illinois 60093, 847-716-3543; T.D.D. 847-501-6041.

**MINUTES
WINNETKA VILLAGE COUNCIL
REGULAR MEETING
February 21, 2023**

(Approved: xx)

A record of a legally convened regular meeting of the Council of the Village of Winnetka, which was held at the Council Chambers on Tuesday, February 21, 2023, at 7:00 PM.

- 1) Call to Order. President Rintz called the meeting to order at 7:01 PM. Village Manager Bahan called the roll. Present: Trustees Rob Apatoff, Andy Cripe, Tina Dalman, Robert Dearborn, Kim Handler, and John Swierk. Absent: None. Also present: Assistant Village Manager Kristin Kazenas, Deputy Village Clerk Berina Gradjan, Village Attorney Peter Friedman, Community Development Director David Schoon, Water & Electric Director Brian Keys and approximately 2 persons in the audience.
- 2) Pledge of Allegiance. President Rintz led the group in the Pledge of Allegiance.
- 3) Quorum.
 - a) March 7, 2023 Regular Meeting All of the Council members present said they expect to attend with the exception of Trustee Dearborn, who stated that he will not be in attendance.
 - b) March 14, 2023 Study Session All of the Council members present said they expect to attend with the exception of Trustee Apatoff and Trustee Dalman, who stated that they will not be in attendance.
 - c) March 21, 2023 Regular Meeting All of the Council members present said they expect to attend with the exception of Trustee Dalman, who stated that she will not be in attendance.
- 4) Public Comment. None.
- 5) Reports:
 - a) Trustees
 - i) Trustee Apatoff commends improved retail vacancy rates in the business districts.
 - b) Attorney. None.
 - c) Manager. None.
 - d) Village President.
 - i) President Rintz informs Council on Congressman Brad Schneider's visit and engagement with the community.
- 6) Approval of the Consent Agenda.

Trustee Swierk has requested to remove Resolution No. R-24-2023: Approving an Outdoor Dining Agreement with Paradise Foods Italia LLC dba Tocco (Adoption) and Resolution No. R-25-2023: Approving an Outdoor Dining Agreement with Good Grapes (Adoption) for separate consideration.

Trustee Swierk, seconded by Trustee Cripe, moved to approve the Consent Agenda. By voice vote, the motion carried.

7) Consent Agenda

- a) Approval of Village Council Minutes.
 - i) January 33, 2023 Special Meeting
 - ii) January 31, 2023 Special Study Session
 - iii) February 7, 2023 Regular Meeting
- b) Approval of Warrant List dated January 27, 2023 – February 9, 2023 in the amount of \$508,954.24.
- c) Resolution No. R-23-2023: Approving a Contract with Rubino Engineering, Inc. for Material Testing Services (Adoption)
- d) Resolution No. R-26-2023: Approving a Non-exclusive License Agreement for the Use of the Elm Street Train Station Parking Lot and Station Park for a Farmers Market (Adoption)
- e) Resolution No. R-27-2023: Authorizing an Extension of the Agreement with Christy Webber & Company for the Commercial District Floral Program (Adoption)
- f) Resolution No. R-28-2023: Awarding a Contract to St. Aubin Nursery & Landscape Group, Inc. for the Purchase and Planting of Parkway Trees (Adoption)
- g) Resolution No. R-29-2023: Waiving Bidding and Approving the Purchase of Pedestrian Lighting from KSA Lighting & Controls Inc (Adoption)
- h) Approval of Annual Outdoor Seating Area Permits (Adoption)

Trustee Cripe, seconded by Trustee Apatoff, moved to approve the foregoing items on the Consent Agenda by omnibus vote. By roll call vote, the motion carried. Ayes: Trustees Apatoff, Cripe, Dalman, Dearborn, Handler, and Swierk. Nays: None. Absent: None.

Resolution No. R-24-2023: Approving an Outdoor Dining Agreement with Paradise Foods Italia LLC dba Tocco (Adoption)

Council discusses concerns related to the increase of square footage, matters related to rent, sales, taxes, and seating capacity related matters.

Council discusses that the Village has not denied an outdoor seating permit to date and will continue to work diligently with the businesses in town to consider new ideas.

Trustee Cripe, seconded by Trustee Handler, moved to adopt Resolution No. R-24-2023. By roll call vote, the motion carried. Ayes: Trustees Apatoff, Cripe, Dalman, Dearborn, and Handler. Nays: Trustee Swierk. Absent: None. Abstain: None.

Resolution No. R-25-2023: Approving an Outdoor Dining Agreement with Good Grapes (Adoption)

Trustee Cripe, seconded by Trustee Dalman, moved to adopt Resolution No. R-25-2023. By roll call vote, the motion carried. Ayes: Trustees Apatoff, Cripe, Dalman, Dearborn, and Handler. Nays: Trustee Swierk. Absent: None. Abstain: None.

8) Ordinances and Resolutions.

a) Ordinance No. M-04-2023: 232 Sheridan – GFA, Corner & Rear Yard Setback Variations (Introduction)

Community Development Director David Schoon informs Council of a request submitted by the applicants requesting the approval of zoning variations to allow construction of a two-story addition to the west side of the existing residence.

David Schoon informs Council of matters related to a private road easement, an amended site plan proposed by the applicant, and the advisory board approvals.

The applicant addresses Council regarding historic preservation of the property and the proposed requested zoning variations.

Trustee Dearborn, seconded by Trustee Handler, moved to introduce Ordinance No. M-04-2023. By voice vote, the motion carried.

b) Ordinance No. MC-03-2023: Amending Chapter 13.08 of the Winnetka Village Code Concerning Interconnection of Renewable Energy Sources (Introduction)

Water & Electric Director Brian Keys informs Council of the proposed changes to the Village Code regarding the Interconnection of Renewable Energy Sources addressing legislative changes, recommendations from the Illinois Municipal Utility Association, customer feedback, and improvements to support administration of the code.

Brian Keys provides information regarding the history of the policy for Interconnection of Renewable Energy Sources, specific Village Code changes, wholesale cost, retail cost, and customer credit related to energy usage, matters related to residential and commercial energy usage, and coverage related to homeowners insurance.

Council discusses various types of solar panels, current zoning regulations, statistics related to residential solar panel usage, seasonal wholesale rates, concerns related to customer usage, costs, and credit, and matters related to the Electric Plant budget.

Public Comment

Andrew Offenbacher addresses Council on Village Code changes and energy usage.

President Rintz confirms that the Village Code, given future changes to energy consumption and adaption, can be amended to comply with consumer needs.

Trustee Apatoff, seconded by Trustee Cripe, moved to introduce Ordinance No. MC-03-2023. By voice vote, the motion carried.

c) Resolution No. R-30-2023: Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits (Introduction)

Water & Electric Director Brian Keys informs Council that current calculations are based on residential rates, however, the proposed changes will allow for commercial and government institutions to be charged the applicable rate based on the customer category.

Trustee Cripe, seconded by Trustee Apatoff, moved to introduce Resolution No. R-30-2023. By voice vote, the motion carried.

9) Old Business. None.

10) New Business. None.

11) Appointments: None.

9) Closed Session for the Purpose of Discussing Personnel Pursuant to Section 2(c)(1) of the Open Meetings Act.

Trustee Dearborn, seconded by Trustee Dalman, moved to adjourn to Closed Session for the Purpose of Personnel Pursuant to Section 2(c)(1) of the Open Meetings Act and to adjourn the Open Meeting automatically and immediately upon the conclusion of the Closed Session without the conduct of any further business or comments. By roll call vote, the motion carried. Ayes: Trustees Apatoff, Cripe, Dalman, Dearborn, Handler, and Swierk. Nays: None. Absent: None.

The Council adjourned into Closed Session at 8:20 p.m.

10) Adjournment. The Closed Session meeting ended at 9:45 p.m.

Recording Secretary



Agenda Item Executive Summary

TITLE: Approval of Warrant List Dated February 10, 2023 - February 23, 2023

PRESENTER: Robert M. Bahan

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Consent Agenda

ITEM HISTORY:

None.

EXECUTIVE SUMMARY:

The Warrant List Dated February 10, 2023 - February 23, 2023

RECOMMENDATION:

Consider approving the Warrant List dated February 10, 2023 - February 23, 2023

ATTACHMENTS:

None



Agenda Item Executive Summary

TITLE: Ordinance No. MC-03-2023: Amending Chapter 13.08 of the Winnetka Village Code Concerning Interconnection of Renewable Energy Sources (Adoption)

PRESENTER: Brian Keys

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

At the February 21, 2023 Village Council Meeting, the Council Introduced Ordinance MC-03-2023, An Ordinance Amending Chapter 13.08 Of The Winnetka Village Code Concerning Interconnection Of Renewable Energy Sources.

EXECUTIVE SUMMARY:

The Village Code contains provisions for the interconnection of renewable energy sources to the Village's electric distribution system. The policy was originally implemented in 2008 and permits customers with a qualifying renewable energy system to receive a credit for excess energy delivered to the Village's distribution system.

With the exception of a 2019 policy change in the calculation of credits received for excess energy delivered to the Village's electric system in the summer months, the existing Village Code has been in place for fourteen years. At present, eight residential properties and one commercial property have installed renewable energy (solar) systems that are interconnected with the electric distribution system.

Staff is proposing revisions to the Village Code as it pertains to the interconnection of renewable energy sources based on the following: i) staff experience administering the current Village Code, ii) legislative changes enacted by the State of Illinois, iii) input from the Illinois Municipal Utility Association and iv) feedback from customers.

Revision to two sections of the Village Code, Section 13.06.60 *Standards for renewable energy sources* and Section 13.08.155 *Credits for certain renewable energy sources* are proposed. The proposed changes will permit the installation of larger renewable energy sources based on the customer's historical energy consumption, revise technical and administrative requirements contained in the Village Code, and ensure that Village Code is in adherence with enacted legislation.

Background

The Village first examined "photovoltaic billing options" at the April 11, 2006 Village Council Meeting. At that time, staff outlined a request from a resident to provide "net metering". Staff presented various billing/credit options for the Council's consideration. No further action or code changes were undertaken or enacted following the Study Session.

At the August 12, 2008, Village Council Study Session, the Council revisited the topic of net metering following Illinois legislative action that required investor owned utilities to offer net metering. The Council's consensus was to direct staff to move forward with drafting a policy for net metering with credits for energy returned to the electric distribution system being calculated at the same unit price as wholesale purchased power.

At the November 18, 2008, Village Council Meeting, the Council adopted Ordinance No. MC-8-2008, amending the Village Code to add provisions which permitted qualifying renewable energy systems to deliver excess power to the Village's distribution system. The Council subsequently adopted Resolution No. R-36-2008, amending electric rates to provide credits for renewable energy. The ordinance permitted an electric utility customer to install a renewable energy source (solar panels or wind unit) and deliver excess power to the Village's electric distribution system. The resolution established the calculation of Renewable Energy Production Credits (REPC). Energy delivered to the Village's electric system was credited at the equivalent wholesale unit price (\$ per kWh) budgeted under Purchased Power in the Electric Fund Budget.

The policy was later revised in 2019. At the October 10, 2019, Village Council Study Session, the Council provided policy direction, directing staff to change the method used to calculate Renewable Energy Production Credits. For the summer billing months (June - September), any excess energy delivered to the Village's electric system was to be credited at the residential retail rate as opposed to the unit price of wholesale purchase power. This change was implemented for calendar year 2020 with the adoption of Resolution No. R-87-2019, a resolution establishing rates and fees.

In 2021, the State of Illinois enacted The Climate and Equitable Jobs Act (CEJA). This legislation addressed customer rights for self-generation which extended requirements to electric cooperative and municipal systems. In summary, the statute requires municipal and cooperative systems to comply with the following:

- Provide the opportunity for residential and small commercial customers to install renewable generating facilities and to self-generate electricity.
- Prohibits applying discriminatory fees for self-generation.
- Create consistent, fair policies that are accessible to all customers.
- Provide reasonable/fair credits to such customers for excess electricity delivered to the municipal system by the customer.
- Balance the opportunity to self-generate and to receive reasonable/fair credits against the rights of other non-self-generating customers.
- Permit a customer to store renewable energy at their residence.
- Have transparent fair processes for raising and addressing concerns.
- Post policy publicly on website.

For the most part, these requirements are already addressed in the Village Code and/or Rate Resolution.

Proposed Changes

Staff is proposing changes to Village Code to address legislative changes, recommendations from the Illinois Municipal Utility Association, customer feedback and/or improvements to support administration of the code. The proposed changes expand renewable options for all classes of electric customers, permit the installation and interconnection of larger renewable systems based on the specific customer's energy requirements, and ensure Village Code adheres to state legislation. With the

assistance of the Village Attorney, staff is proposing changes to Section 13.08.155 and 13.06.260 of the Village Code.

Changes to Village Code, Section 13.08.155 *Credits for certain renewable energy sources* are summarized as follows:

- Removal of the 10kW capacity limitation for renewable energy sources. The industry currently considers residential and small commercial systems to be 25kW or smaller. Proposed changes to the code would permit systems larger than 25kW after a review by Water & Electric determines that the proposed system does not create a safety risk or adversely impact the distribution system. This change addresses concerns raised by some customers that the current 10kW limit for renewable energy systems is too small and adversely impacts their decision to install a renewable energy system. It also addresses a potential conflict with enacted CEJA legislation.
- Incorporate language to further clarify that the formula for determining renewable energy production credits may be amended by the Village Council at any time.
- Incorporate language to address the disposition of any remaining renewable energy production credits in the event of the termination of a utility account. A similar provision is already contained in Resolution No. R-117-2022.
- Incorporate language to address the situation when a renewable electric generation system is installed on a property with multiple electric accounts. The property owner will be required to determine which account the system will be interconnected. The proposed language will not permit the allocation of credits across multiple accounts.
- Incorporate language to identify the entity responsible for administration of the policy and provide a process for a customer to raise a concern. This addresses a requirement enacted in the CEJA legislation.

Changes to Village Code, Section 13.08.260 *Standards for renewable energy sources* are summarized as follows:

- Removal of the 10kW capacity limitation for renewable energy sources. The industry currently considers residential and small commercial systems to be 25kW or smaller. Proposed changes to the code would permit systems larger than 25kW after a review by Water & Electric determines that the proposed system does not create a safety risk or adversely impact the distribution system. As previously noted, this change addresses concerns raised by some customers that the current 10kW limit for renewable energy systems is too small and adversely impacts their decision to install a renewable energy system. It also addresses a potential conflict with enacted CEJA legislation.
- Revise and update technical requirements including referenced standards.
- Incorporate a requirement that the renewable generating system must be properly sized so as not to exceed the customer's historical annual usage.
- Incorporate language providing the Village with the ability to require disconnection of a previously approved renewable generating system if it causes adverse impacts to the distribution system.
- Eliminate the requirement for the customer to provide proof that general liability insurance does not exclude liability and losses related to the customer's operation of the renewable energy source. This requirement appears to be unique to the Village and the provision was difficult to administer after a system was installed and approved.

With the assistance of the Village Attorney, Ordinance No. MC-03-2023, has been prepared to amend

Chapter 13.08 of the Winnetka Village Code concerning interconnection of renewable energy sources. The Ordinance was Introduced at the February 21, 2023, Village Council Meeting.

RECOMMENDATION:

Consider Adoption of Ordinance No. MC-03-2023, an Ordinance Amending Chapter 13.08 of the Winnetka Village Code Concerning Interconnection of Renewable Energy Sources.

ATTACHMENTS:

1. Ordinance MC-03-2023: Amending Village Code Concerning Renewable Energy Sources

**AN ORDINANCE AMENDING CHAPTER 13.08 OF
THE WINNETKA VILLAGE CODE CONCERNING
INTERCONNECTION OF RENEWABLE ENERGY SOURCES**

WHEREAS, the Village of Winnetka is an electric utility supplier to residents, governmental entities, and businesses in the Village; and

WHEREAS, Chapter 13.08 of the Winnetka Village Code, as amended ("**Village Code**"), regulates the supply and usage of electricity in the Village ("**Electricity Regulations**"); and

WHEREAS, Village staff has recommended amendments to the Electricity Regulations due to feedback from electric customers, to increase the efficiency of administering the Electricity Regulations and to advance the Village's renewable energy policies, recommendations from the Illinois Municipal Utility Association, and the adoption of the Clean Energy Jobs Act; and

WHEREAS, the Village Council has determined amending the Electricity Regulations as set forth in this Ordinance is in the best interests of the Village;

NOW, THEREFORE, the Council of the Village of Winnetka does ordain as follows:

SECTION 1: RECITALS. The foregoing recitals are hereby incorporated into this Section as the findings of the Village Council, as if fully set forth herein.

SECTION 2: AMENDMENT TO SECTION 13.08.155 OF THE VILLAGE CODE. Section 13.08.155, titled "Credits for Certain Renewable Energy Sources," of Chapter 13.08, titled "Municipal Electric Systems," of Title 13, titled "Municipal Utility Services," of the Village Code shall be amended to read as follows:

"Section 13.08.155 Credits for certain renewable energy sources.

- A. Any customer that has installed a solar, ~~or wind generating unit, or other~~ **type of renewable electric generation system(s), which system may include technology to store renewable energy at the customer's property,** ~~of 10 kW or less in accordance with the standards established by section 13.08.260 of this chapter,~~ **shall be eligible, upon submitting a written request application to the Director of Water and Electric, to receive a credit for energy delivered to the Village: provided that the renewable electric generation system or, if more than one generation system, the combined generating capacity of all of the generation systems, are either: (i) designed to produce 25 kW or less; or (ii) if the renewable electric generation system is designed to produce more than 25 kW, the Director of Water and Electric determines that the installation of the generation system will not create a safety risk or adversely impact the Village's distribution system. No application shall be approved by the Director of**

Additions are bold and double-underlined; deletions are struck through

Water and Electric unless the applicant: (x) demonstrates that the proposed renewable electric generating units will comply with the requirements of this Chapter; and (y) signs an application, in which the applicant agrees to comply with the terms of this Section and Section 13.08.260 of this Code.

- B. The formula for calculating the renewable energy production credit shall be established by resolution of the Village Council introduced at one meeting and adopted at a subsequent meeting, which formula may be amended at any time by the Village Council.
- C. The renewable energy credit shall be separately itemized and shown on the face of the customer's bill.
- D. In the event of termination of an account that qualifies for a renewable energy production credit under this Section, any outstanding credits shall be forfeited and shall not carry over to a new customer at the service location or be transferred to an account associated with another service location.
- E. In the event that a renewable electric generating system(s) is installed on a property with multiple electric accounts, the property owner must determine which account the renewable energy source will be connected. The owner may not allocate credits across multiple accounts.
- F. Citizen and customer concerns with the Village's interconnection of renewable energy policy, as adopted in this Section and Section 13.08.260 of this Code, should be raised with the Director of Water and Electric, as the primary employee responsible for the implementation of the interconnection of renewable energy sources to the Village's distribution system. In the event that the Director of Water and Electric is unable to address a citizen or customer concern, that citizen or customer may raise their concerns either with the Village Manager or the Village Council, which may be done in the public comment portion of an open meeting of the Village Council and may be considered by the Village Council in accordance with its normal processes.

SECTION 3: AMENDMENT TO SECTION 13.08.260 OF THE VILLAGE CODE.

Section 13.08.260, titled "Standards for Renewable Energy Sources," of Chapter 13.08, titled "Municipal Electric Systems," of Title 13, titled "Municipal Utility Services," of the Village Code shall be amended to read as follows:

"Section 13.08.260 Standards for renewable energy sources.

- A. Permitted renewable energy sources. Any renewable energy source must be powered by photovoltaic or wind generators. A customer may have more

Additions are bold and double-underlined; deletions are struck through

than one renewable energy source, provided that the combined generating capacity of all such sources: (i) does not exceed 1025 kW or, if the combined generating capacity of all such sources; or (ii) the Director of Water and Electric determines that the installation of the generating system will not create a safety risk or adversely impact the Village's distribution system.

B. Technical requirements. No customer shall be allowed to take power from a renewable energy source that does not meet or exceed all of the applicable provisions of the standards set forth in the following paragraphs of this subsection. **For systems greater than 25kW**, the customer shall be responsible for having the power generating system tested every three years for compliance with these standards and for promptly submitting the test results to the Director of Water and Electric. Failure to provide the test results in a timely manner may be cause for disconnection without further notice:

1. IEEE Std. 929-2000 Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.
2. IEEE Std ~~1547-2003~~ **1547-2018** IEEE Standard for Interconnecting Distributed Resources with Electric Power Systems.
3. IEEE Std ~~1547.1-2005~~. Title: **1547.1-2020** IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems.
4. ~~UL 1998, Software in Programmable Components~~ **IEEE Std. 1453, Recommended Practice For the Analysis of Fluctuating Installations on Power Systems.**
5. **IEEE Std. 519-2014, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.**
- ~~56.~~ UL 1741, Inverters, Converters, Controllers, and Interconnection Systems for use with Distributed Energy Resources.
- ~~67.~~ ~~NEC Article 690 — 2008, Solar Photovoltaic Systems~~ **National Electric Safety Code (NESC).**
- 8. ANSI/NFPA 70, National Electrical Code.**
- 9. OSHA (29 CFR 1910.269).**

C. Additional requirements.

1. **A renewable generating system(s) must be properly sized so as not to exceed the customer's expected annual usage based on the**

Additions are bold and double-underlined; deletions are struck through

customer's current energy needs. As part of the interconnection application, the Director of Water and Electric shall analyze a customer's energy usage by using 36-months of historical energy usage (if available) in order to calculate the customer's expected annual usage. If a customer provides documentation specifying why the usage has increased over that time, such as home renovation/addition or installation of electric heating or an electric vehicle charging station on the premises, then the previous 12-month period shall be used to determine the average for the expected annual usage. If the applicable months of data are not available for an individual customer, the average usage amounts by other similar customers of the Village, as determined by Director of Water and Electric, shall be used to set the expected annual usage.

2. In the event that an approved renewable electric generating system becomes unsafe or begins to cause adverse impacts to the Village's distribution system, the Village may require the customer to disconnect the renewable electric generating system until the unsafe condition or adverse impacts are remedied.

~~13.~~ Any person supplying power and energy to the Village shall indemnify the Village, its officers, employees, agents and assigns from all liability and losses of any kind resulting from the customer's operation of the renewable energy source.

~~2.~~ ~~The customer shall provide proof that the customer maintains general liability insurance that does not exclude liability and losses related to the customer's operation of the renewable energy source.~~

~~34.~~ Every renewable energy source shall bear a decal or sticker warning of a possible backfeed from the renewable source. The identifying decal or sticker shall be in a form approved by the Director of the Water and Electric Department and shall be installed on the face of the electric meter.

~~45.~~ All renewable energy sources shall be equipped with an outdoor disconnect switch with provisions for padlocking in the open position for the protection of workers and the public. The disconnect switch shall be clearly marked and placed within five feet of the electric meter.

D. Financial responsibility of customer. The customer shall be responsible for all costs incurred by the Village that are in excess of those that would be charged a customer without a source of Renewable Power and Energy.”

Additions are bold and double-underlined; deletions are struck through

SECTION 4: SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 5: EFFECTIVE DATE. This Ordinance will be in full force and effect upon its passage and approval in the manner provided by law.

[SIGNATURE PAGE FOLLOWS]

PASSED this ____ of _____, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2023.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the
President and Board of Trustees of
the Village of Winnetka, Illinois,
this ____ day of _____,
2023.

Introduced: February 21, 2023

Passed and Approved: _____, 2023



Agenda Item Executive Summary

TITLE: Ordinance No. M-04-2023: 232 Sheridan - GFA, Corner & Rear Yard Setback Variations (Adoption)

PRESENTER: David Schoon

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Consent Agenda

ITEM HISTORY:

On February 21, 2023, the Village Council approved introduction of M-04-2023, An Ordinance Granting Variations from the Winnetka Zoning Ordinance to Allow the Construction of an Addition to an Existing Residence within the R-4 Single Family Residential Zoning District (232 Sheridan Road).

EXECUTIVE SUMMARY:

On February 21, 2023, the Village Council discussed the application submitted by Amy and William Franzen (collectively, the "Applicant") as the owners of the property located at 232 Sheridan Road (the "Subject Property"), seeking approval of the following variations to allow construction of an addition to the existing residence on the Subject Property:

1. **Roofed Lot Coverage** of 2,128.62 square feet, whereas a maximum of 2,114.59 square feet is permitted, a variation of 14.03 square feet (0.66%) [Section 17.30.030 – Intensity of Use of Lot];
2. **Gross Floor Area (GFA)** of 3,778.69 square feet, whereas a maximum of 3,132.72 square feet is permitted, a variation of 645.97 square feet (20.62%) [Section 17.30.040 – Maximum Building Size] [Note: The existing residence currently consists of 3,631.88 square feet. The proposed addition would add 146.81 square feet of GFA];
3. **Corner Yard Setback** of 8.3 feet from the private road easement along the north property line, whereas a minimum of 22.82 feet is required, a variation of 14.52 feet (63.63%) [Section 17.30.050 – Front and Corner Yard Setbacks] [Note: The residence currently provides a corner yard setback of 5.65 feet];
4. **Rear Yard Setback** of 7.08 feet from the west property line, whereas a minimum of 15.45 feet is required, a variation of 8.37 feet (54.17%) [Section 17.30.070 – Rear Yard Setback] [Note: The residence currently provides a rear yard setback of 14 feet];
5. **Front-facing attached garage width** of 22.52 feet, whereas a maximum width of 22 feet is permitted, a variation of 0.52 feet (2.36%) [Section 17.30.110 – Garages]; and
6. **Front-facing attached garage door width** of 18 feet, whereas a maximum width of 9 feet is permitted for an individual door, a variation of 9 feet (100%) [Section 17.30.110 – Garages].

After discussing the proposed plan and the recommendation of approval by the Zoning Board of

Appeals, the Council voted 6-0 to approve introduction of Ordinance M-04-2023, granting the requested relief.

RECOMMENDATION:

The Council may wish to consider adoption of Ordinance M-04-2023.

ATTACHMENTS:

1. Ordinance No. M-04-2023: Granting Variations from the Winnetka Zoning Ordinance to Allow Construction of an Addition - 232 Sheridan Road

**AN ORDINANCE GRANTING VARIATIONS FROM THE
WINNETKA ZONING ORDINANCE TO ALLOW THE CONSTRUCTION
OF AN ADDITION TO AN EXISTING RESIDENCE WITHIN
THE R-4 SINGLE FAMILY RESIDENTIAL DISTRICT
(232 Sheridan Road)**

WHEREAS, Amy and William Franzen (collectively, the “*Applicant*”) are the record title owners of the parcel of real property commonly known as 232 Sheridan Road in Winnetka, Illinois, and legally described in **Exhibit A** attached to and, by this reference, made a part of this Ordinance (“*Subject Property*”); and

WHEREAS, the Subject Property is approximately 0.18 acres in area and located within the R-4 Single Family Residential District of the Village (“*R-4 District*”) and is improved with a single-family residence (“*Residence*”); and

WHEREAS, the Applicant desires to construct a two-story addition to the Residence (“*Proposed Addition*”); and

WHEREAS, pursuant to Section 17.30.030 of the Winnetka Zoning Ordinance (“*Zoning Ordinance*”), the maximum permitted roofed lot coverage for the Subject Property is 2,114.59 square feet; and

WHEREAS, pursuant to Section 17.30.040 of the Zoning Ordinance, the maximum permitted gross floor area for the Subject Property is 3,132.72 square feet; and

WHEREAS, pursuant to Section 17.30.050 of the Zoning Ordinance, the required corner yard setback for the Subject Property is 22.82 feet; and

WHEREAS, pursuant to Section 17.30.070 of the Zoning Ordinance, the required rear yard setback for the Subject Property is 15.45 feet; and

WHEREAS, pursuant to Section 17.30.110 of the Zoning Ordinance, the maximum permitted front-facing attached garage width for the Subject Property is 22 feet; and

WHEREAS, pursuant to Section 17.30.110 of the Zoning Ordinance, the maximum permitted front-facing attached garage door width for the Subject Property is 9 feet for an individual door; and

WHEREAS, to construct the Proposed Addition on the Subject Property, the Applicant filed an application for variations from: (i) Section 17.30.030 to allow roofed garage coverage of 2,128.62 square feet; (ii) Section 17.30.040 to allow a gross floor area of 3,778.69 square feet; (iii) Section 17.30.050 to allow a corner yard setback of 8.3 feet from the private road easement along the north property line; (iv) Section 17.30.070 to allow a rear yard setback of 7.08 feet from the west property line; (v) Section 17.30.110 to allow a front-facing attached garage width of 22.52 feet;

and (vi) Section 17.30.110 to allow a front-facing attached garage door width of 18 feet (collectively, the “*Variations*”); and

WHEREAS, on December 12, 2022 and January 9, 2023, after due notice thereof, the Zoning Board of Appeals (“**ZBA**”) conducted a public hearing on the Variations and, by a vote of four members in favor and two opposed, recommended that the Council of the Village of Winnetka (“**Village Council**”) approve the Variations; and

WHEREAS, pursuant to Section 17.60.050 of the Zoning Ordinance, the Village Council has determined that: (i) the Variations are in harmony with the general purpose and intent of the Zoning Ordinance and are in accordance with general or specific rules set forth in Chapter 17.60 of the Zoning Ordinance; and (ii) there are practical difficulties or particular hardships in the way of carrying out the strict letter of the provision or regulation of the Zoning Ordinance from which the Variations have been sought; and

WHEREAS, the Village Council has determined that approval of the Variations for the Subject Property within the R-4 District is in the best interest of the Village and its residents;

NOW, THEREFORE, the Council of the Village of Winnetka do ordain as follows:

SECTION 1: RECITALS. The foregoing recitals are hereby incorporated into this section as the findings of the Village Council, as if fully set forth herein.

SECTION 2: APPROVAL OF VARIATIONS. Subject to, and contingent upon, the terms, conditions, restrictions, and provisions set forth in Section 3 of this Ordinance, the Variations from Sections 17.30.030, 17.30.040, 17.30.050, 17.30.070 and 17.30.110 of the Zoning Ordinance to allow the construction of the Proposed Addition on the Subject Property are hereby granted, in accordance with and pursuant to Chapter 17.60 of the Zoning Ordinance and the home rule powers of the Village.

SECTION 3: CONDITIONS. The Variations granted by Section 2 of this Ordinance are subject to, and contingent upon, compliance by the Applicant with the following conditions:

- A. **Commencement of Construction.** The Applicant must commence the construction of the Proposed Addition no later than 12 months after the effective date of this Ordinance.
- B. **Compliance with Regulations.** Except to the extent specifically provided otherwise in this Ordinance, the development, use, and maintenance of the Proposed Addition and Subject Property must comply at all times with all applicable Village codes and ordinances, as they have been or may be amended over time.
- C. **Reimbursement of Village Costs.** In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable Village codes, ordinances, resolutions, rules, or regulations, the Applicant must pay to the Village, promptly upon presentation of a written demand or demands therefor, of all fees,

costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Ordinance. Payment of all such fees, costs, and expenses for which demand has been made shall be made by a certified or cashier's check. Further, the Applicant must pay upon demand all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

- D. Compliance with Plans. The development, use, and maintenance of the Proposed Addition on the Subject Property must be in strict accordance with the plans prepared by J.P. Franzen Associates Architects, P.C., consisting of 8 sheets, with a latest revision date of December 15, 2022, copies of which are attached to, and by this reference, made part of this Ordinance as **Exhibit B (“Plans”)**, except for minor changes and site work approved by the Director of Community Development or the Director of Public Works (within their respective permitting authority) in accordance with all applicable Village codes, ordinances, and standards.

SECTION 4: RECORDATION; BINDING EFFECT. A copy of this Ordinance will be recorded with the Cook County Clerk Recording Division. This Ordinance and the privileges, obligations, and provisions contained herein inure solely to the benefit of, and are binding upon, the Applicant and each of its heirs, representatives, successors, and assigns.

SECTION 5: FAILURE TO COMPLY. Upon the failure or refusal of the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, in addition to all other remedies available to the Village, the approvals granted in Section 2 of this Ordinance will, at the sole discretion of the Village Council, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Council may not so revoke the approvals granted in Section 2 of this Ordinance unless it first provides the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Village Council. In the event of revocation, the development and use of the Subject Property will be governed solely by the regulations of the applicable zoning district and the applicable provisions of the Zoning Ordinance, as the same may, from time to time, be amended. Further, in the event of such revocation, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

SECTION 6: AMENDMENTS. Any amendment to this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Zoning Ordinance for amending or granting variations.

SECTION 7: SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 8: EFFECTIVE DATE.

A. This Ordinance will be effective only upon the occurrence of all of the following events:

1. Passage by the Village Council in the manner required by law;
2. Publication in pamphlet form in the manner required by law; and
3. The filing by the Applicant with the Village Clerk of an Unconditional Agreement and Consent in the form of **Exhibit C** attached to and, by this reference, made a part of this Ordinance to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance and to indemnify the Village for any claims that may arise in connection with the approval of this Ordinance.

B. In the event that the Applicant does not file with the Village Clerk a fully executed copy of the unconditional agreement and consent described in Section 8.A.3 of this Ordinance within 60 days after the date of passage of this Ordinance by the Village Council, the Village Council shall have the right, in its sole discretion, to declare this Ordinance null and void and of no force or effect.

[SIGNATURE PAGE FOLLOWS]

PASSED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2023.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the
President and Board of Trustees
of the Village of Winnetka,
Illinois, this ____ day of _____,
2023.

Introduced: February 21, 2023

Passed and Approved: _____, 2023

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT 1 IN WHITE'S RESUBDIVISION OF WINNETKA VILLAGE BEING A SUBDIVISION OF BLOCK 2 IN PHILLIPS PARTITION OF SUBDIVISION IN FRACTIONAL SOUTH EAST QUARTER OF SECTION 21, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 232 Sheridan Road, Winnetka, Illinois.

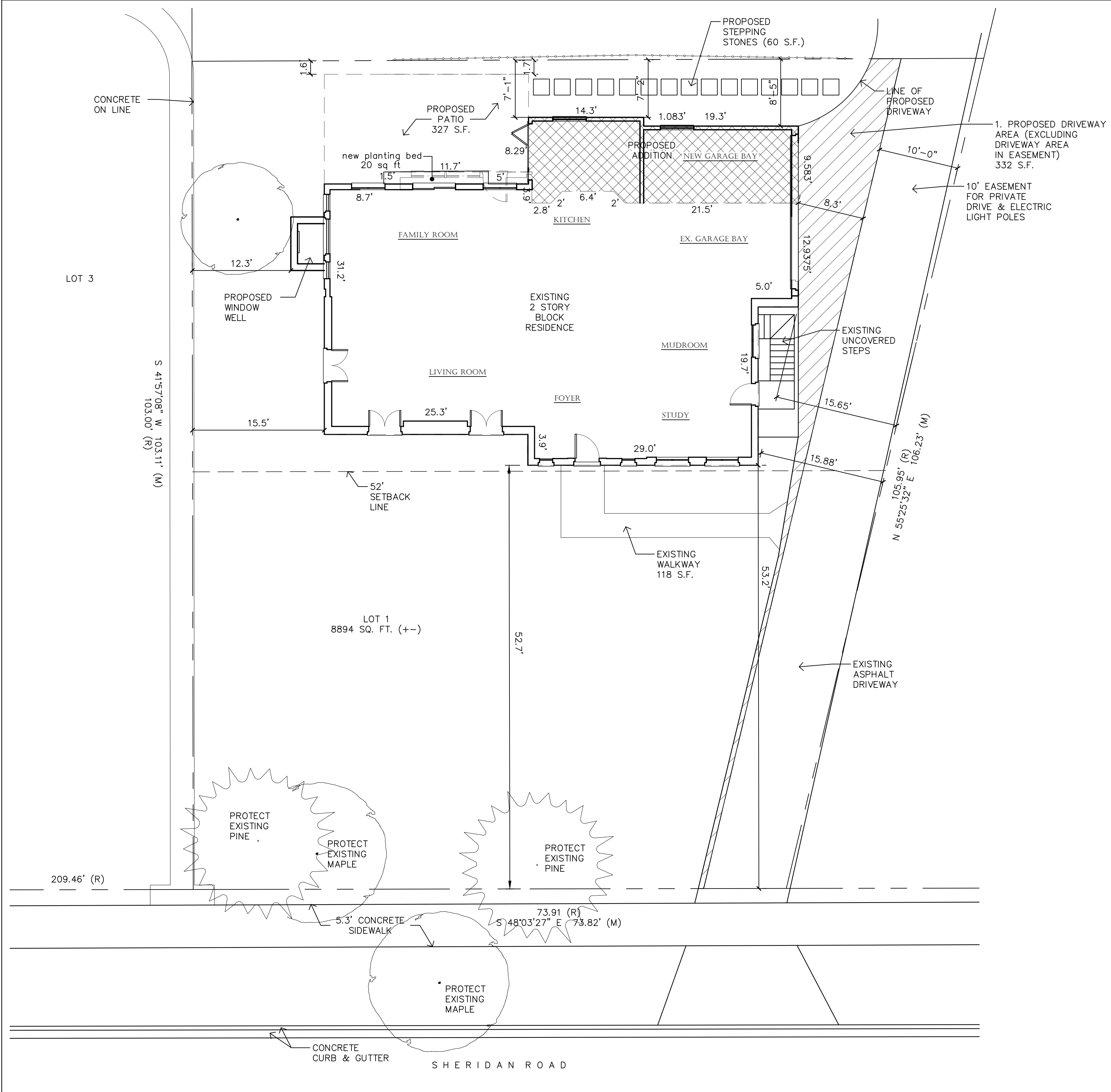
PIN: 05-21-411-014-0000

EXHIBIT B

PLANS

(SEE ATTACHED EXHIBIT B)

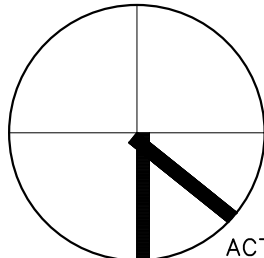
EXHIBIT B

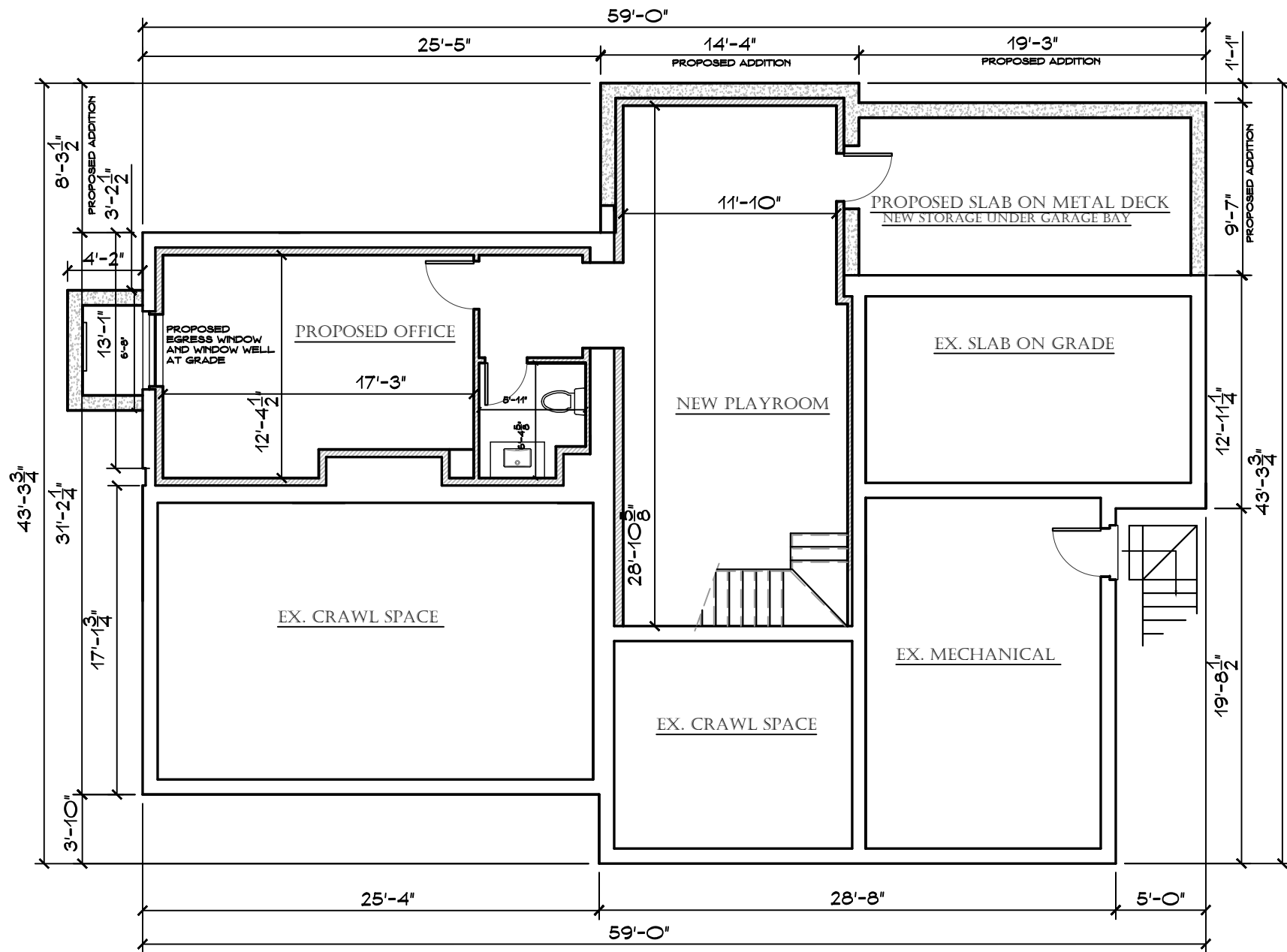


ALL EXISTING SITE INFORMATION DERIVED FROM PROPERTY BOUNDARY SURVEY PREPARED FOR:
WILLIAM & AMY FRANZEN
232 SHERIDAN ROAD
WINNETKA, IL 60093

BY:
EXACTA LAND SURVEYORS, LLC
316 EAST JACKSON STREET
MORRIS, IL 60450
(773) 305-4011
SURVEY #: 2207.2860
DATED: 11.04.22 (REV.)

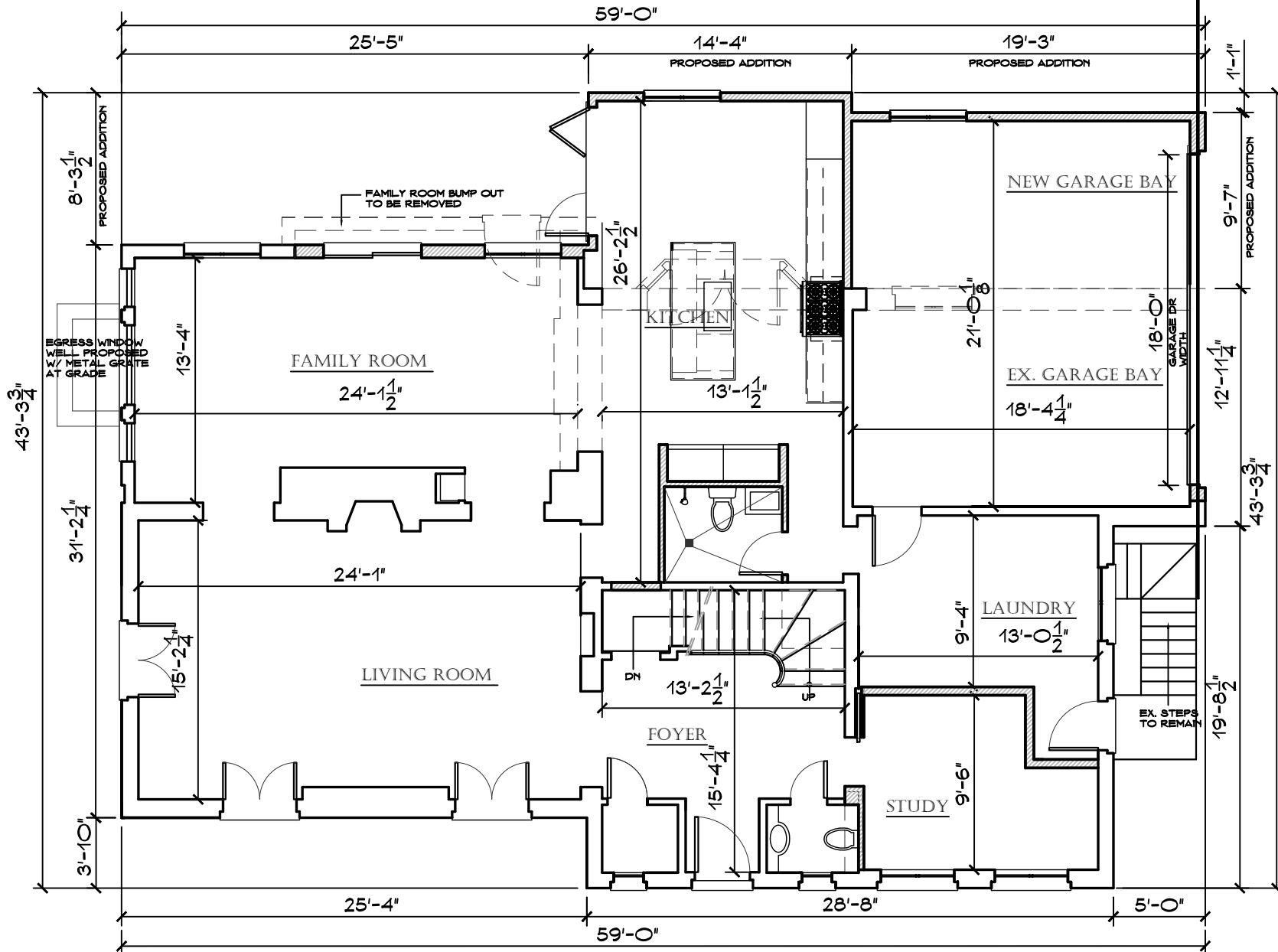
FOR TOWN APPROVALS ONLY
11.15.22 r 12.15.22

ADDRESS OF CONSTRUCTION: 232 SHERIDAN ROAD WINNETKA, IL 60093		DATE:
LOT #: 1 ZONE: R-4		
APPLICANT: FRANZEN ASSOCIATES 95 HARBOR ROAD SOUTHPORT, CT 06890		
OWNER OF RECORD: WILLIAM & AMY FRANZEN 232 SHERIDAN ROAD WINNETKA, IL 60093		
PROPOSED SITE PLAN		
FRANZEN ASSOCIATES 95 HARBOR ROAD SOUTHPORT, CT 06890 TEL: (203) 259-0529 Fax: (203) 254-6497	 PROJECT NORTH ACTUAL NORTH	SCALE: 1/8" = 1' - 0"
		DRAWN BY: RFA
		PROJECT #: 122021
		DRAWING #: SP-1



FOUNDATION - BASEMENT PROPOSED
 SCALE 1/8"=1'-0"

SCALE AS NOTED	ALTERATIONS AND ADDITIONS TO THE RESIDENCE	DATE OCT. 31, 2022 DEC. 15, 2022
DRAWN BY JTS	MR. AND MRS. FRANZEN	PROPOSED PLANS AND ELEVATIONS
JOB NO. 093022	232 SHERIDAN ROAD WINNETKA IL	
DRAWING NO. A-0	JPFRANZEN ASSOCIATES ARCHITECTS, P.C.	
	TIDE MILL BUILDING 55 HARBOR ROAD SOUTHPORT, CT 06490 (203) 239-0029	9

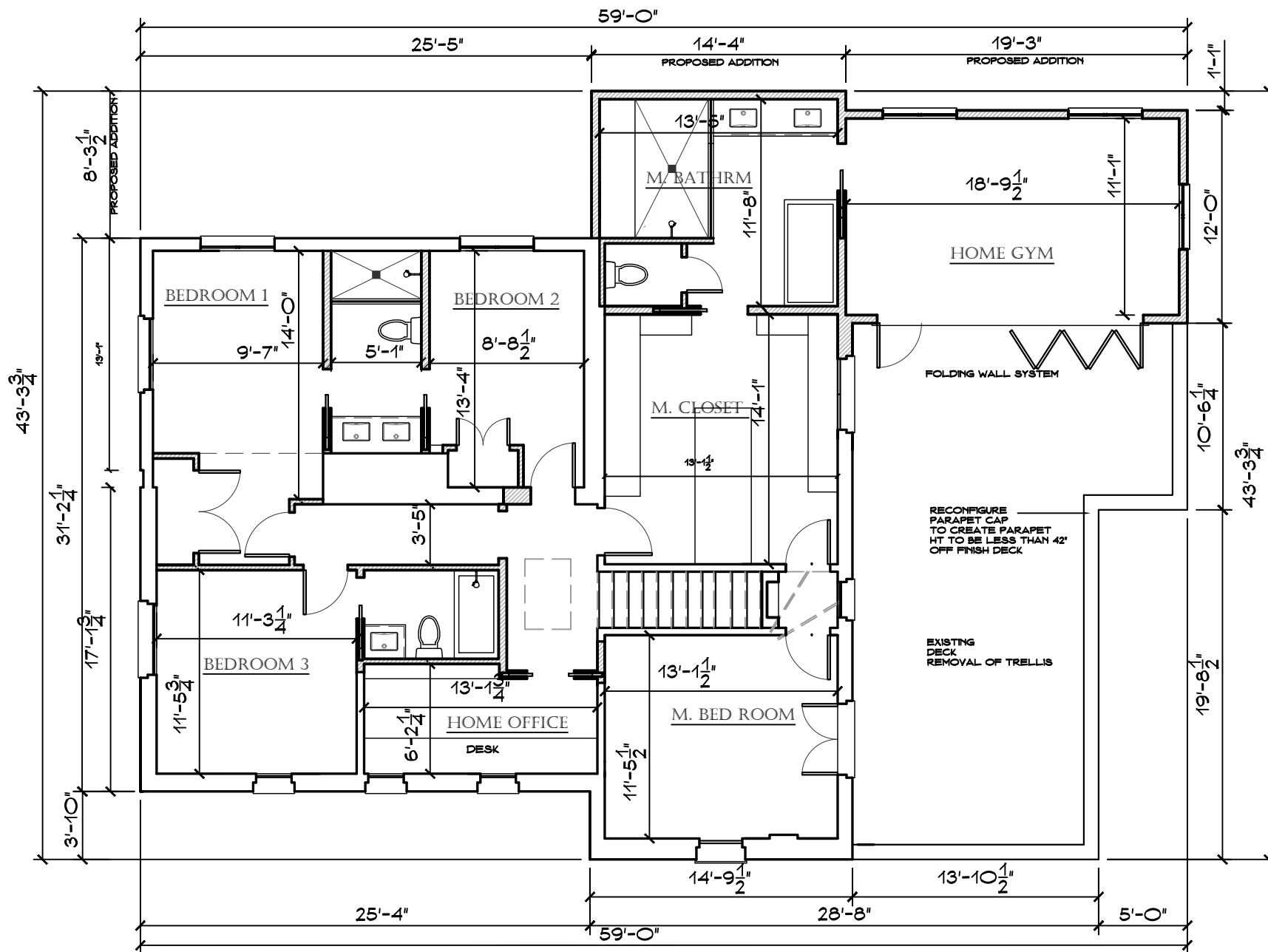


FIRST FLOOR - PROPOSED

SCALE

1/8"=1'-0"

ALTERATIONS AND ADDITIONS TO THE RESIDENCE MR. AND MRS. FRANZEN 232 SHERIDAN ROAD WINNETKA IL		DATE OCT. 31, 2022 NOV. 16, 2022 DEC. 16, 2022
PROPOSED PLANS AND ELEVATIONS		
J.P.FRANZEN ASSOCIATES ARCHITECTS, P.C. TIDE MILL BUILDING 50 HARBOR ROAD SOUTHPORT, CT 06480 (203) 259-0029		
SCALE AS NOTED		A-1
DRAWN BY JTS		
JOB NO 093022		
DRAWING NO		



J.P. FRANZEN ASSOCIATES ARCHITECTS, P.C.		THE MILL BUILDING 55 HARBOR ROAD SOUTHPORT, CT 06480 (203) 239-0029		DATE OCT. 31, 2022 NOV. 15, 2022	
ALTERATIONS AND ADDITIONS TO THE RESIDENCE MR. AND MRS. FRANZEN 232 SHERIDAN ROAD WINNETKA IL		PROPOSED PLANS AND ELEVATIONS		DATE OCT. 31, 2022 NOV. 15, 2022	
SCALE AS NOTED		DRAWN BY JTS		JOB NO 093022	
		DRAWING NO A-2			

**J.P. FRANZEN
ASSOCIATES
ARCHITECTS, P.C.**

THE MILL BUILDING
95 HARBOR ROAD
SOUTHPORT, CT 06480
(203) 239-0029





FRONT (EAST-STREET SIDE) ELEVATION-PROPOSED

SCALE

1/8"=1'-0"

**J.P.FRANZEN
ASSOCIATES
ARCHITECTS. P.C.**

TIDE MILL BUILDING
95 HARBOR ROAD
SOUTHPORT, CT 06490
(203) 239-0329

ALTERATIONS AND ADDITIONS
TO THE RESIDENCE
MR. AND MRS. FRANZEN
232 SHERIDAN ROAD
WINNETKA IL

PROPOSED PLANS
AND ELEVATIONS

DATE
OCT. 31, 2022
NOV. 15, 2022
DEC. 15, 2022

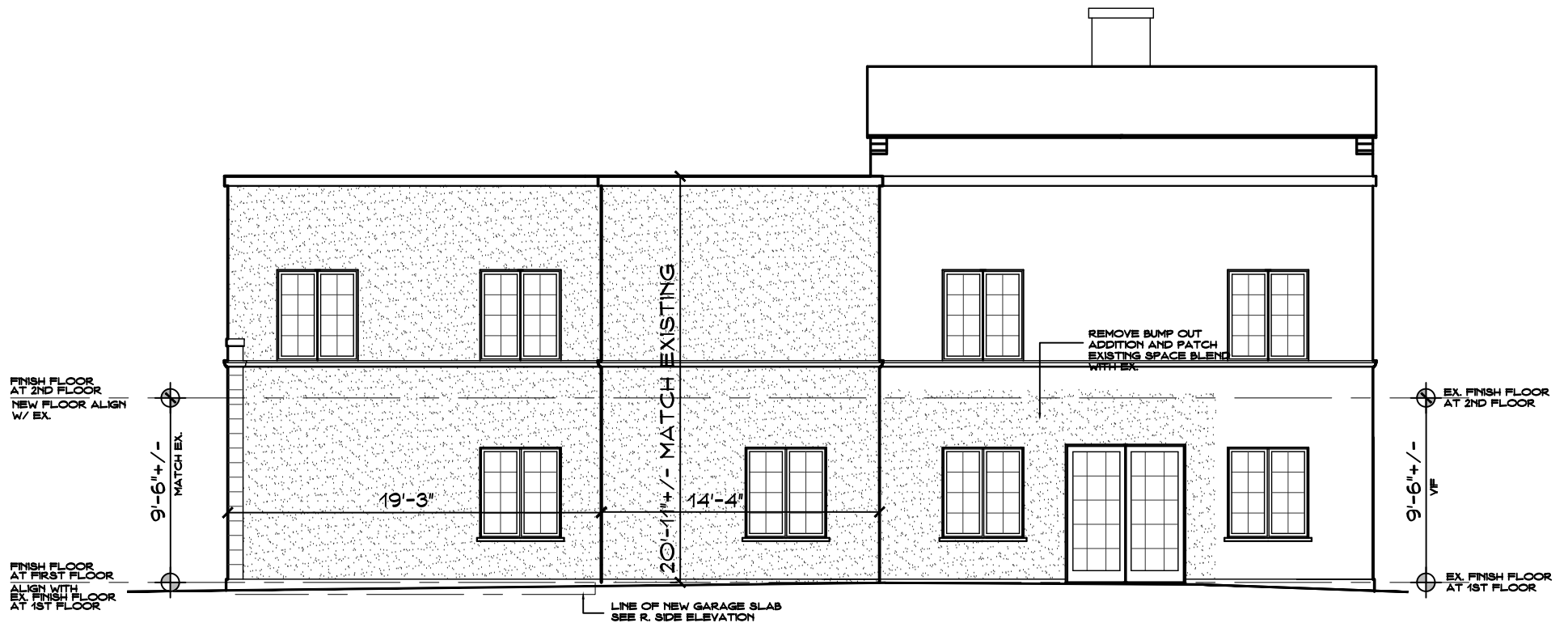
SCALE
AS NOTED

DRAWN BY
JTS

JOB NO
093022

DRAWING NO

A-3



REAR (WEST) ELEVATION -PROPOSED

SCALE 1/8"=1'-0"

**J.P.FRANZEN
ASSOCIATES
ARCHITECTS. PC.**

TIDE MILL BUILDING
95 HARBOR ROAD
SOUTHFORD, CT 06480
(203) 239-0529

ALTERATIONS AND ADDITIONS
TO THE RESIDENCE
MR. AND MRS. FRANZEN
232 SHERIDAN ROAD
WINNETKA IL

PROPOSED PLANS
AND ELEVATIONS

DATE
OCT. 31, 2022
NOV. 15, 2022
DEC. 15, 2022

SCALE
AS NOTED

DRAWN BY
JTS

JOB NO
093022

DRAWING NO

A-4



R. SIDE (NORTH) ELEVATION-PROPOSED

SCALE

1/8"=1'-0"

**J.P.FRANZEN
ASSOCIATES
ARCHITECTS. PC.**

TIDE MILL BUILDING
95 HARBOR ROAD
SOUTHFORD, CT 06480
(203) 239-0529

ALTERATIONS AND ADDITIONS
TO THE RESIDENCE
MR. AND MRS. FRANZEN
232 SHERIDAN ROAD
WINNETKA IL

PROPOSED PLANS
AND ELEVATIONS

DATE
OCT. 31, 2022
NOV. 15, 2022
DEC. 15, 2022

SCALE
AS NOTED

DRAWN BY
JTS

JOB NO
093022

DRAWING NO

A-5



L. SIDE (SOUTH) ELEVATION-PROPOSED

SCALE

1/8"=1'-0"

**J.P. FRANZEN
ASSOCIATES
ARCHITECTS. P.C.**

TIDE MILL BUILDING
95 HARBOR ROAD
SOUTHPORT, CT 06490
(203) 239-0329

ALTERATIONS AND ADDITIONS
TO THE RESIDENCE
MR. AND MRS. FRANZEN
232 SHERIDAN ROAD
WINNETKA IL

PROPOSED PLANS
AND ELEVATIONS

DATE
OCT. 31, 2022
NOV. 15, 2022
DEC. 16, 2022

SCALE
AS NOTED

DRAWN BY
JTS

JOB NO
093022

DRAWING NO

A-6

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

TO: The Village of Winnetka, Illinois ("*Village*");

WHEREAS, Amy and William Franzen (collectively, the "*Applicant*") are the record title owners of the parcel of real property commonly known as 232 Sheridan Road in Winnetka, Illinois ("*Subject Property*"); and

WHEREAS, the Subject Property is approximately 0.18 acres in area and located within the R-4 Single Family Residential District of the Village ("*R-4 District*") and is improved with a single-family residence ("*Residence*"); and

WHEREAS, the Applicant desires to construct a two-story addition to the Residence ("*Proposed Addition*"); and

WHEREAS, to construct the Proposed Addition on the Subject Property, the Applicant filed an application for variations from: (i) Section 17.30.030 to allow roofed garage coverage of 2,128.62 square feet; (ii) Section 17.30.040 to allow a gross floor area of 3,778.69 square feet; (iii) Section 17.30.050 to allow a corner yard setback of 8.3 feet from the private road easement along the north property line; (iv) Section 17.30.070 to allow a rear yard setback of 7.08 feet from the west property line; (v) Section 17.30.110 to allow a front-facing attached garage width of 22.52 feet; and (vi) Section 17.30.110 to allow a front-facing attached garage door width of 18 feet (collectively, the "*Variations*"); and

WHEREAS, Ordinance No. M-04-2023, adopted by the Village Council on _____, 2023 ("*Ordinance*"), grants the Variations; and

WHEREAS, Section 8 of the Ordinance provides, among other things, that the Ordinance will be of no force or effect unless and until the Applicant has filed, within 60 days following the passage of the Ordinance, its unconditional agreement and consent to accept and abide by each and all of the terms, conditions, and limitations set forth in the Ordinance;

NOW, THEREFORE, the Applicant does hereby agree and covenant as follows:

1. The Applicant hereby unconditionally agrees to accept, consent to, and abide by each and all of the terms, conditions, limitations, restrictions, and provisions of the Ordinance.
2. The Applicant acknowledges that public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or a denial of any procedural right.
3. The Applicant acknowledges and agrees that the Village is not and will not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's grant of the

Variations for the Subject Property or its adoption of the Ordinance, and that the Village's approvals do not, and will not, in any way, be deemed to insure the Applicant against damage or injury of any kind and at any time.

4. The Applicant hereby agrees to hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with the Village's adoption of the Ordinance granting the Variations for the Subject Property.

5. The Applicant hereby agrees to pay all expenses incurred by the Village in defending itself with regard to any and all of the claims mentioned in this Unconditional Agreement and Consent. These expenses will include all out-of-pocket expenses, such as attorneys' and experts' fees, and will also include the reasonable value of any services rendered by any employees of the Village.

Dated: _____, 2023

ATTEST: **AMY FRANZEN**

By: _____

ATTEST: **WILLIAM FRANZEN**

By: _____



Agenda Item Executive Summary

TITLE: Resolution No. R-30-2023: Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits (Adoption)

PRESENTER: Brian Keys

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

At the February 21, 2023, Village Council Meeting, Resolution No. R-30-2023, A Resolution Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits was Introduced.

EXECUTIVE SUMMARY:

Staff is recommending that the Village Council consider changing the method to calculate renewable energy production credits currently specified in Resolution No. R-117-2022, a Resolution Establishing Rates and Fees Related to Utility Services. The current calculation is based on residential installations with interconnected renewable energy systems. Village Code permits customers in other electric rate categories (i.e. commercial, school & government) to install renewable energy systems. At present, one commercial customer has installed a renewable energy system (solar) and staff anticipates future installations of renewable energy systems at governmental institutions. The proposed change would align the renewable energy production credit calculation with the energy charge of the applicable rate category for the customer.

Background:

At the November 18, 2008 Village Council Meeting, the Village Council adopted Ordinance No. MC-8-2008, amending the Village Code to add "net metering" provisions. The Village Council subsequently adopted Resolution No. R-36-2008, amending electric rates to provide credits for renewable energy. The ordinance permitted an electric utility customer to install a renewable energy source (solar panels or wind unit) and deliver excess power to the Village's electric distribution system. The resolution established the calculation of Renewable Energy Production Credits (REPC). Energy delivered to the Village's electric system was credited at the equivalent wholesale unit price (\$ per kWh) budgeted under Wholesale Purchased Power in the Electric Fund Budget.

At the October 10, 2019, Village Council Study Session, the Village Council provided policy direction changing the method used to calculate renewable energy production credits. For the summer months (June - September), any excess energy delivered to the Village's electric system was credited at the retail rate as opposed to the unit price of wholesale purchase power. This change was implemented for calendar year 2020 with the adoption of Resolution No. R-87-2019, a Resolution Establishing Rates

and Fees.

Resolution No. R-87-2019 and subsequent annual utility rates resolutions calculated a customer's Renewable Energy Production Credit (REPC) in the summer months by multiplying the Summer Residential Energy Cost (REPC) by the amount of Renewable Energy (RE) delivered to the Village's electric system. The resultant REPC is applied to the customer's utility bill.

Proposed Amendment:

Resolution No. R-117-2022 adopted on December 6, 2022 established utility rates for 2023 and utilizes the same approach to determine a customer's REPC as Resolution No. R-87-2019. Staff is proposing that the calculation be revised to reflect the summer energy cost of the applicable rate category for the electric customer with the renewable energy system as opposed to using the summer Residential energy cost for customers in other rate categories.

In accordance with the prior rate studies, electric rates vary by customer classification. The 2023 summer energy cost for each rate category is as follows:

<u>Rate Category</u>	<u>Energy Charge for Summer Months</u>
Residential	\$0.1523 per kWh
Large Residential	\$0.1132 per kWh
Commercial	\$0.1490 per kWh
School & Government (<1000kW)	\$0.09174 per kWh
School & Government (>1000kW)	\$0.09196 per kWh
Space Heating Customers	\$0.1501 per kWh
Water Heating Customers	\$0.1508 per kWh

The proposed amendment is as follows:

Summer Residential Energy Cost, or SREC, means the energy charge during the defined summer months utilizing the ~~residential~~ **applicable** rate category.

Implementation of the proposed change does not negatively impact any existing customers with renewable energy systems. With the exception of one installation, all of the renewable energy systems interconnected with the Village's electric distribution system are located on residential properties. Only one installation is located on a commercial property. The renewable energy system at this property has not historically produced more energy than consumed at the site. As such, the customer has not received any Renewable Energy Production Credits.

With the assistance of the Village Attorney, Resolution No. R-30-2023, has been prepared to amend the method of calculating Renewable Energy Production Credits previously adopted in Resolution No. R-117-2022. The Resolution was Introduced at the February 21, 2023, Village Council Meeting.

RECOMMENDATION:

Consider Adoption of Resolution No. R-30-2023, a Resolution Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits.

ATTACHMENTS:

1. Resolution No R-30-2023: Amending Resolution No. R-117-2022 to Amend the Method of Calculating Renewable Energy Production Credits

RESOLUTION NO. R-30-2023

**A RESOLUTION AMENDING RESOLUTION NO. R-117-2022 TO AMEND THE
METHOD OF CALCULATING RENEWABLE ENERGY PRODUCTION CREDITS**

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village has the authority, except as limited by Section 6 of Article VII of such Constitution, to exercise any power and perform any function pertaining to the government and affairs of the Village, including, but not limited to, the powers (i) to regulate for the protection of the public health, safety, morals and welfare, (ii) to license, (iii) to tax, and (iv) to incur debt; and

WHEREAS, the Village owns, operates, and provides an electric utility that provides electric service in the Village ("*Electric Utility Services*"); and

WHEREAS, pursuant to its home rule authority and the Illinois Municipal Code, the Village is permitted to charge fees for Electric Utility Services; and

WHEREAS, on November 15, 2022, the Village Council adopted Resolution No. R-117-2022 ("*Rate Resolution*") to adopt the current rates for Electric Utility Services; and

WHEREAS, Village staff has recommended amendments to the Rate Resolution to clarify the administration of the electricity regulations and advance the Village's renewable energy policies; and

WHEREAS, the President and Village Council have determined that adoption of this Resolution will serve and be in the best interest of the Village of Winnetka;

NOW, THEREFORE, be it resolved by the Council of the Village of Winnetka as follows:

SECTION 1: RECITALS. The Village Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: AMENDMENTS TO FEES FOR ELECTRICITY. Section 3, titled "Fees for Electricity," of the Rate Resolution is hereby amended and shall read as follows:

“* * *

E. Renewable Energy Production Credit.

1. Terms:

- a. Eligible Customer. A customer of the Village's Electric Utility who satisfies all of the requirements of Section 13.08.260 of the Winnetka Village Code.

Additions are bold and double-underlined; deletions are struck through

March 7, 2023

R-30-2022

- b. Renewable Energy Production Credit, or REPC, means the actual credit as calculated pursuant to the formula in subsection 2, below.
- c. Renewable Energy, or RE, means the amount of energy, measured in kWh, delivered to the Village by an Eligible Customer.
- d. Summer ~~Residential~~ Energy Cost, or SREC, means the energy charge during the defined summer months utilizing the ~~residential~~ **applicable** rate category (section 13.08.080 of the Winnetka Village Code).
- e. Wholesale Purchase Power Cost, or WPPC, means the allocation on a per kilowatt hour basis of the total annual cost of purchasing power shown in the annual budget line item for "Purchased Power."

2. Calculation of REPC:

Summer Rate REPC = (RE x SREC)

Winter Rate REPC = (RE x WPPC)

* *

SECTION 3: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

[SIGNATURE PAGE FOLLOWS]

Additions are bold and double-underlined; deletions are struck through

ADOPTED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

Signed:

Village President

Countersigned:

Village Clerk

Introduced: February 21, 2023

Adopted: _____

Additions are bold and double-underlined; ~~deletions are struck through~~

March 7, 2023

- 3 -

R-30-2023



Agenda Item Executive Summary

TITLE: Resolution No. R-31-2023: Approving an Intergovernmental Agreement with the Winnetka Foreign Fire Insurance Board for the Provision of Administrative Services (Adoption)

PRESENTER: John Ripka

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Consent Agenda

ITEM HISTORY:

The Illinois Foreign Fire Insurance Tax is a two-percent charge paid by consumers who purchase fire insurance from companies based outside of Illinois. It is collected by the Illinois Municipal League and is distributed to the local municipality for the maintenance, use and benefit of the Fire Department as determined by the Foreign Fire Insurance Board (FFIB).

In May, 2022, the Illinois General Assembly approved Public Act 102-0740, establishing the independence of the FFIB from the host municipality effective January 1, 2023. The FFIB has requested that the Village staff continue providing the administrative services for the Board. After conferring with Legal Counsel from Elrod Friedman, it was determined an Intergovernmental Agreement between the Village and the FFIB is recommended in order for the Village to continue performing these services.

EXECUTIVE SUMMARY:

The Foreign Fire Insurance Board has operated with the support of the Village accounting and administrative services for many years. With the recently passed legislation establishing the independence of the Board, these services will need to be performed under an Intergovernmental Agreement between the FFIB and the Village. The agreement was drafted by Village Counsel from Elrod Friedman and sets forth the roles and responsibilities the Board and the Village will each have. The IGA was reviewed and approved by the FFIB at their January meeting.

RECOMMENDATION:

Consider adopting Resolution No. R-31-2023, approving an Intergovernmental Agreement with the Foreign Fire Insurance Board.

ATTACHMENTS:

1. Resolution No. R-31-2023 Approving an Intergovernmental Agreement with the Winnetka Foreign Fire Insurance Board

RESOLUTION NO. R-31-2023

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH
THE WINNETKA FOREIGN FIRE INSURANCE BOARD
FOR THE PROVISION OF ADMINISTRATIVE SERVICES**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the Village of Winnetka ("***Village***") to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize and encourage intergovernmental cooperation; and

WHEREAS, Public Act 102-0740 amended the Foreign Fire Insurance License Fee Act, 65 ILCS 5/11-10-0.01 *et seq.* ("***Act***") to make foreign fire insurance boards completely independent, and not a subsidiary bodies of, municipalities; and

WHEREAS, the Winnetka Foreign Fire Insurance Board ("***Board***") is an Illinois foreign fire insurance board established and operated under the Act; and

WHEREAS, the Board desires the Village to continue to provide administrative services to the Board, which services include assisting in making purchases, maintaining the Board's bank account, and providing basic accounting assistance (collectively, "***Administrative Services***"); and

WHEREAS, the Village desires to continue providing the Board Administrative Services to allow for more efficient cooperation between the Village and the Board pursuant to an intergovernmental agreement ("***Agreement***"); and

WHEREAS, the Village Council has determined that it is in the best interests of the Village and its residents to enter into the Agreement with the Board;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Winnetka, Cook County, Illinois, as follows:

SECTION 1: RECITALS. The Village Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: APPROVAL OF AGREEMENT. The Village Council hereby approves the Agreement in substantially the form attached to this Resolution as **Exhibit A** and in a final form approved by the Village Attorney.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The Village Council hereby authorizes and directs the Village President and the Village Clerk to execute and attest, respectively, on behalf of the Village, the final Agreement after receipt by the Village

March 7, 2023

R-31-2023

Manager of two executed copies of the final Agreement from the Board; provided, however, that if the Village Manager does not receive two executed copies of the final Agreement from the Board within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the final Agreement will, at the option of the Village Council, be null and void.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

ADOPTED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____
NAYS: _____
ABSENT: _____
ABSTAIN: _____

Signed

Village President

Countersigned:

Village Clerk

EXHIBIT A

Agreement

INTERGOVERNMENTAL AGREEMENT BETWEEN THE WINNETKA FOREIGN FIRE INSURANCE BOARD AND THE VILLAGE OF WINNETKA

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is made and entered into as of the 7th day of March, 2023 ("**Effective Date**"), and is by and between the Winnetka Foreign Fire Insurance Board, an Illinois foreign fire insurance board ("**Board**"), and the Village of Winnetka, an Illinois home rule municipal corporation ("**Village**") (collectively, the "**Parties**").

IN CONSIDERATION OF the agreements set forth in this Agreement, the receipt and sufficiency of which are mutually acknowledged, and pursuant to the Village's and the Board's statutory powers, the Parties agree as follows:

SECTION 1. RECITALS.

A. Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize and encourage intergovernmental cooperation.

B. The Board is an Illinois foreign fire insurance board established and operated by the members of the Village's Fire Department ("**Fire Department**") pursuant to the Foreign Fire Insurance License Fee Act, 65 ILCS 5/11-10-0.01 *et seq.* ("**Act**").

C. Pursuant to the Act, the Board is, and operates as, an entity independent from the Village, and is responsible for collecting the foreign fire insurance license fees imposed by the Act ("**License Fees**"). The Act authorizes the Board to expend License Fees for the maintenance, use, and benefit of the Fire Department.

D. Section 11-10-2(a) of the Act authorizes the Board to contract for services, including, without limitation, accounting and professional services.

E. The Board has requested that the Village assist the Board in its operations by providing certain administrative services and resources, and the Village desires to assist the Board with those services and resources, subject to certain conditions and restrictions.

F. The Parties desire to enter into this Agreement to set forth their respective rights and obligations regarding the provision of administrative services and resources by the Village to the Board, and the approval, use, and ownership of purchases made by the Board using the License Fees.

SECTION 2. ADMINISTRATIVE SERVICES.

The Village will provide the following administrative services to the Board, subject to the terms, conditions, and restrictions set forth in this Agreement ("**Administrative Services**"):

A. Financial Services.

1. Bank Account. The Village will hold a bank account in trust for the Board ("**Board Account**"). The Board Account will be used solely for the deposit of License Fees and to make purchases of goods and services as authorized by the Act, but only as expressly directed by the Board or as may be required under applicable law.

2. Accounts Payable/Receivable. The Village will process accounts

receivable and accounts payable transactions related to the Board Account, but only as expressly directed by the Board. The Board will submit all paperwork, information, and documentation required by the Village in order to process the transactions. The Board is responsible for maintaining its own independent financial records.

B. Village Resources.

1. Meeting Locations. The Board may use Village Hall or other Village-owned property for meetings. The Board must coordinate in advance the specific schedule for use of Village Hall or other Village-owned property with the Village Manager, or their designee.

2. Village Staff Resources. Except for the provision of the Financial Services as set forth in Section 2.A of this Agreement and the services explicitly described below, the Board may not use Village staff to perform any of its operations or legal obligations.

a. Freedom of Information Act and Other Records Requests. Village staff will handle all FOIA requests, subpoenas, and other lawful requests for records submitted to the Village. The Board agrees it will cooperate fully with the production of any records determined by the Village to be appropriate for disclosure. The Board is responsible for compliance with any FOIA requests, subpoenas, and other lawful requests for records submitted to the Board.

b. Open Meetings Act. Village staff will assist the Board in posting Board meeting agendas at the meeting location, if the Board is meeting on Village-owned property, but only at the express direction of the Board. The Village is not responsible for verifying or assisting with the Board's compliance with the OMA.

3. Village Equipment and Supplies. The Board may use, for Board purposes, the Village-owned equipment and supplies, including, without limitation, computers, copiers, printers, and phones, that the members of the Board use in their capacity as members of the Fire Department; provided, however, that the Board understands and agrees that any records held on such equipment, retained on Village property, or located on Village servers are subject to disclosure pursuant to the Illinois Freedom of Information Act ("**FOIA**"), the Illinois Open Meetings Act ("**OMA**"), in response to a subpoena or court order, or as otherwise required by law.

6. Other Village Resources. Except for the provision of the Financial Services as set forth in Section 2.A of this Agreement and the Village Resources as set forth in Section 2.B of this Agreement, the Board may not use any other Village resources for its operations.

B. Audit Services. Section 11-10-2 of the Act requires the Board to audit the License Fee funds to verify that the funds have been expended by the Board only for the purposes authorized by the Act. If the Village is required to include the Board, its operations, or the Board Account in the Village's required annual audit, the Board will reimburse the Village for the actual costs attributed to the inclusion of the Board in the audit. The Village makes no representation that the Village audit satisfies the Board's obligation to perform its own audit. Otherwise, if the Village is not required to include the Board, its operations, or the Board Account in the Village's audit, the Board will remain solely responsible for completion of its own audit in accordance with the Act.

SECTION 3. BOARD PURCHASES.

A. Purchasing Policies and Procedures. The Board will adopt purchasing policies and procedures that are, in all material ways, the same as the Village's purchasing policies and procedures ("**Purchasing Policies**") and comply with the Purchasing Policies when making purchases or paying for services using the License Fees or the Board Account.

B. Cooperation Regarding Board Purchases. The Board and the Village will cooperate regarding planning for, and purchasing of, materials, equipment, or services for the maintenance, use, and benefit of the Fire Department (collectively, "**Board Purchases**").

C. Village Approval of Board Purchases. The Parties understand and agree that Village Fire Chief has authority to determine what equipment, materials, services, and supplies are used by Fire Department staff, installed on or within Fire Department facilities, or installed or used on Fire Department equipment and vehicles. The Board will, to the extent practicable, consult with the Fire Chief prior to making any Board Purchases. Board Purchases will not be allowed for use by the Fire Department or on any Village-owned property or within any Village-owned vehicle unless the Fire Chief has approved the Board Purchases.

D. Village Ownership of Board Purchases. Ownership of and all right, title, and interest in all Board Purchases that have been approved by the Fire Chief will be transferred to the Village via a bill of sale prior any use of the Board Purchase by the Fire Department.

E. Service Contracts. The Parties acknowledge and agree that prior to any Board Purchases that involve the purchase of services being performed on Village-owned property or for the benefit of Village employees, the services must be approved by the Fire Chief in advance in accordance with Section 3.C of this Agreement. If approved, the Village may enter into a contract with the service provider directly for the services, in which case, the Board will reimburse the Village for the cost of such services.

SECTION 4. COMPLIANCE WITH LAWS.

A. The Act. The Board will, at all times, operate in compliance with the Act, as it may be amended from time to time.

B. Other Laws, Ordinances, and Regulations. It is the responsibility of the Board to comply with all applicable federal, state, and local laws, orders, rules, and regulations, as they may be modified or amended from time to time, including, without limitation, the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, and Illinois Local Records Act, 50 ILCS 205/1 *et seq.* as it applies to the administration and operation of the Board.

SECTION 5. WAIVER OF LIABILITY; INDEMNITY.

A. Assumption of Liability. The Board assumes any and all liability arising from the completion, or the failure to complete, the Administrative Services.

B. Indemnification. The Board will indemnify, hold harmless, and defend the Village against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with: (i) the Village's performance of, or failure to perform, the Administrative Services or any part thereof; (ii) this Agreement; (iii) any

failure to meet the representations or obligations of the Board set forth in this Agreement; or (iv) the Board's failure to comply with the Act.

C. No Warranties. The Board acknowledges and agrees that the Village is providing the Administrative Services without any warranties, whether express or implied, and that the Village does not represent or warrant that the Administrative Services will meet any or all of the Board's particular requirements, or that the Administrative Services will be without any defect or problem.

D. No Waiver of Tort Immunity Defenses. Nothing contained in this Agreement is or will be deemed to be a waiver of the defenses available to the Parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, with respect to claims by third parties.

E. Responsibility for Damage or Loss. The Board will be responsible and liable for, and must promptly and without charge to the Village, repair or replace, damage done to, and any loss or injury (collectively "**Loss**") suffered by, the Village to the extent the Loss arises out of the acts or omissions of the Board.

F. Responsibility for Delay. The Board may not hold the Village liable for any delays in the procurement or receipt of any Board Purchases that may be due to compliance with the terms of this Agreement.

SECTION 6. TERM; TERMINATION.

A. Term. The term of this Agreement is for one year after the date on which the Agreement is fully executed ("**Term**") and will automatically renew for successive one-year renewal terms unless terminated in accordance with this Agreement.

B. Termination. Either Party may terminate this Agreement with or without cause by providing 60 days' prior written notice to the other Party.

SECTION 7. ENFORCEMENT. The Parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Board agrees that it will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the Village, or any of its elected or appointed officials, officers, employees, agents, representatives, or attorneys, on account of the negotiation, execution, or breach of this Agreement or on an account of a tort committed by the Village except for claims based on gross negligence or willful misconduct on the part of the Village. In the event of a judicial proceeding brought by one Party to this Agreement against the other Party to this agreement, the successful Party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

SECTION 8. GENERAL PROVISIONS.

A. Binding Agreement. This Agreement is binding on and will inure to the benefit of the Parties, and their respective successors and assigns.

B. Amendments and Modifications. No amendment or modification to this Agreement

will be effective until it is reduced to writing and approved and executed by the Parties to this Agreement.

C. Governing Laws; Venue. This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Illinois. Exclusive jurisdiction with regard to the any actions or proceedings arising from, relating to, or in connection with this Agreement will be in the Circuit Court in Cook County, Illinois.

D. Authority to Execute. The Parties warrant and represent that the persons executing this Agreement on their behalf have been properly authorized to do so.

E. Interpretation. This Agreement will be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement will be construed as though all Parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party will not be applicable to this Agreement.

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

G. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation will be made, or be valid, against the Parties.

H. Entire Agreement. It is understood and agreed that all understandings and agreements between the Parties are merged in this Agreement and neither Party is relying upon any statement or representation, not embodied in this Agreement.

I. Assignment. This Agreement cannot be assigned by any Party without the written consent of the other Party and should any assignment be made by one Party without the written consent of the other Party, such assignment will be null and void.

J. Notices. Any notice required to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by E-mail. E-mail notices will be deemed valid and received by the addressee only upon explicit or implicit acknowledgment of receipt by the addressee. Unless otherwise expressly provided in this Agreement, notices will be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.J, each party will have the right to change the address or the addressee, or both, for all future notices to the other party, but no notice of a change of addressee or address will be effective until actually received.

To the Village:

Village of Winnetka
510 Green Bay Road
Winnetka, Illinois 60093
Attention: Robert Bahan, Village Manager
E-mail: rbahan@winnetka.org

With a copy to:

Elrod Friedman LLP
325 N. LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Peter M. Friedman, Village Attorney
E-mail: peter.friedman@elrodfriedman.com

To the Board:

Winnetka Foreign Fire Insurance Board
428 Green Bay Rd
Winnetka, Illinois 60093
Attention: Chris Tillson, Board President
Email: ctillson@winnetka.org

K. Counterpart Signatures. For the convenience of the Parties, this Agreement may be executed in counterparts, each counterpart will be deemed an original instrument, and such counterparts taken together will constitute one and the same Agreement.

L. Severability. The provisions of this Agreement will be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Agreement will be in any way affected thereby.

IN WITNESS WHEREOF, the Parties agree to the terms of this Agreement and set forth their signatures below:

ATTEST:

**WINNETKA FOREIGN FIRE INSURANCE
BOARD**

By: _____

By: _____

Title: _____

Its: _____

ATTEST:

VILLAGE OF WINNETKA

By: _____

Village Clerk

By: _____

President Christopher Rintz



Agenda Item Executive Summary

TITLE: Resolution No. R-32-2023: Awarding a Contract to A. Lamp Concrete, Inc. for the Construction of Streetscape and Site Improvements for 93 Green Bay Road (Adoption)

PRESENTER: David Schoon, James Bernahl

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Consent Agenda

ITEM HISTORY:

- 8/19/2022 - Council adopted Resolution No. R-80-2022: Approving a Lease with Tala for 93 Green Bay Road
- 10/18/2022 - Council adopted Resolution No. R-107-2022: Granting a Certificate of Appropriateness for Exterior Building Improvements at 93 Green Bay Road
- 12/6/2022 - Council adopted Resolution No. R-126-2022: Approving a Certificate of Appropriateness for Site and Streetscape Improvements at 93 Green Bay Road

EXECUTIVE SUMMARY:

On March 7, 2023, the Village Council is scheduled to consider Resolution No. R-32-2023, Awarding a Contract to A Lamp Concrete Contractors, Inc. ("A Lamp") for the Construction of Streetscape and Site Improvements for 93 Green Bay Road ("Site Improvements"). The FY23 Village Budget includes funding for this project in the Business District Revitalization Fund:

- Acct #420.15.01-650 - \$620,000.00

On February 3, 2023, the Village issued request for bids No. 023-008 ("Request for Bids") seeking qualified contractors to provide the Site Improvements. On February 24, 2023, the Village received one bid:

- A Lamp Concrete Contractors, Inc. - \$514,535.90.

In addition to the work included in the Request for Bids, the Village will be providing the following items to construct the Site Improvements; brick pavers, which we have in stock; lighting controller (which purchase falls under the Village Manager's purchasing authority); and Sternberg light fixtures (which the Council previously authorized with the purchase of such light fixtures for the Phase 5 Streetscape project).

93 Green Bay Site Improvements	Expense
A Lamp Contract	\$514,535.90
Sternberg Light Fixtures	\$28,103.00
<u>Lighting Controller</u>	<u>\$24,990.00</u>
Total Project Expenses	\$567,628.90

As previously noted, the **total budget for this project is \$620,000.00.**

Staff is recommending that the Village Council consider approving Resolution R-32-2023 awarding the contract to A Lamp for the construction of the Site Improvements for an amount not to exceed \$514,535.90.

A Lamp has performed work for the Village in the past including successful completion of the 2020, 2021, & 2022 Street Rehabilitation Programs and the Phase 1-4 of the Streetscape Projects. The Village also recently awarded the Phase 5 Streetscape Project and the 2023 Street Rehabilitation Program to A Lamp. Staff anticipates that A Lamp will continue to provide the Village with a high level of service and meet the obligations for the proposed contract.

RECOMMENDATION:

Consider adopting Resolution No. R-32-2023, Awarding a Contract to A Lamp Concrete Contractors, Inc. for the Construction of Streetscape and Site Improvements for 93 Green Bay Road.

ATTACHMENTS:

1. Resolution No. R-32-2023: Awarding Contract to A Lamp Concrete Contractors, Inc. for Construction of Streetscape & Site Improvements for 93 Green Bay
2. 93 Green Bay Site Improvements - Bid Tab Sheet

RESOLUTION NO. R-32-2023

**A RESOLUTION AWARDING A CONTRACT TO
A. LAMP CONCRETE, INC. FOR THE CONSTRUCTION OF
STREETSCAPE AND SITE IMPROVEMENTS FOR 93 GREEN BAY ROAD**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the Village of Winnetka (“*Village*”) to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Village desires to make streetscape and site improvements on and adjacent to the property located as 93 Green Bay Road as part of the redevelopment of the property (“*Work*”); and

WHEREAS, the Village has budgeted \$620,000.00 for the Work; and

WHEREAS, the Village issued request for bids No. 023-008 (“*Request for Bids*”) seeking qualified contractors to provide the Work; and

WHEREAS, the Village received one bid to provide the Work (“*Bids*”) and opened the Bids on February 24, 2023; and

WHEREAS, pursuant to Chapter 4.12 of the Village Code and the Village’s purchasing manual, the Village Council has determined that A. Lamp Concrete Contractors, Inc. (“*Contractor*”) is the lowest responsible bidder to provide the Work; and

WHEREAS, the Village Council desires to enter into an contract with Contractor to provide the Work from Contractor in an amount not to exceed \$514,535.90 (“*Contract*”); and

WHEREAS, the Village Council has determined that it is in the best interests of the Village and its residents to enter into the Contract with Contractor;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Winnetka, Cook County, Illinois, as follows:

SECTION 1: RECITALS. The Village Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: APPROVAL OF CONTRACT. The Village Council approves the Contract in substantially the form attached to this Resolution as **Exhibit A** and in a final form approved by the Village Manager.

SECTION 3: AUTHORIZATION TO EXECUTE CONTRACT. The Village Council authorizes and directs the Village President and the Village Clerk to execute and attest, respectively, on behalf of the Village, the final Contract after receipt by the Village Manager of two executed copies of the final Contract from the Contractor; provided, however, that if the

March 7, 2023

R-32-2023

Village Manager does not receive two executed copies of the final Contract from the Contractor within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Contract will, at the option of the Village Council, be null and void.

SECTION 5: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law by two-thirds of the Trustees.

ADOPTED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

Signed

Village President

Countersigned:

Village Clerk

March 7, 2023

R-32-2023

EXHIBIT A
CONTRACT

VILLAGE OF WINNETKA

**CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

Contract Number: *008-2023*

VILLAGE OF WINNETKA

CONTRACT FOR THE CONSTRUCTION OF

93 GREEN BAY ROAD SITE DEVELOPMENT

Contract Number: **008-2023**

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Contractor's Certification

Attachment A:	Supplemental Schedule of Contract Terms
Attachment B:	Specifications
Attachment C:	List of Drawings
Attachment D:	Special Project Requirements

**VILLAGE OF WINNETKA
CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

Contract Number: **008-2023**

In consideration of the mutual promises set forth below, the Village of Winnetka, 510 Green Bay Road, Winnetka, Illinois, 60093, an Illinois municipal corporation (“*Owner*”), and A Lamp Concrete Contractors, Inc. (“*Contractor*”), make this Contract as of March 8, 2023, (the “*Effective Date*”) and hereby agree as follows:

ARTICLE I: THE WORK

1.1 Performance of the Work

Contractor, at its sole cost and expense, must provide, perform, and complete all of the following, all of which is herein referred to as the “*Work*”:

1. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner described and specified in this Contract, all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary to accomplish the Project at the Work Site, both as defined in Attachment A, in accordance with the specifications attached hereto as Attachment B, the drawings identified in the list attached hereto as Attachment C, and the Special Project Requirements attached hereto as Attachment D.
2. Permits. Except as otherwise provided in Attachment A, procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith.
3. Bonds and Insurance. Procure and furnish all Bonds and all certificates and policies of insurance specified in this Contract.
4. Taxes. Pay all applicable federal, state, and local taxes.
5. Miscellaneous. Do all other things required of Contractor by this Contract, including without limitation arranging for utility and other services needed for the Work and for testing, including the installation of temporary utility lines, wiring, switches, fixtures, hoses, connections, and meters, and providing sufficient sanitary conveniences and shelters to accommodate all workers and all personnel of Owner engaged in the Work.
6. Quality. Provide, perform, and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional and

construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials, and supplies.

1.2 **Commencement and Completion Dates**

Contractor must commence the Work not later than the “*Commencement Date*” set forth on Attachment A and must diligently and continuously prosecute the Work at such a rate as will allow the Work to be fully provided, performed, and completed in full compliance with this Contract not later than the “*Completion Date*” set forth in Attachment A. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the “*Contract Time*.”

1.3 **Required Submittals**

A. **Submittals Required.** Contractor must submit to Owner all documents, data, and information specifically required to be submitted by Contractor under this Contract and must, in addition, submit to Owner all such drawings, specifications, descriptive information, and engineering documents, data, and information as may be required, or as may be requested by Owner, to show the details of the Work, including a complete description of all equipment, materials, and supplies to be provided under this Contract (“*Required Submittals*”). Such details must include, but are not limited to, design data, structural and operating features, principal dimensions, space required or provided, clearances required or provided, type and brand of finish, and all similar matters, for all components of the Work.

B. **Number and Format.** Contractor must provide [*three*] complete sets for each Required Submittal. All Required Submittals, except drawings, must be prepared on white 8-1/2” x 11”. All drawings must be clearly marked in the lower right-hand corner with the names of Owner and Contractor.

C. **Time of Submission and Owner’s Review.** All Required Submittals must be provided to Owner no later than the time, if any, specified in this Contract for their submission or, if no time for submission is specified, in sufficient time, in Owner’s sole opinion, to permit Owner to review the same prior to the commencement of the part of the Work to which they relate and prior to the purchase of any equipment, materials, or supplies that they describe. Owner will have the right to require such corrections as may be necessary to make such submittals conform to this Contract. All such submittals will, after final processing and review with no exception noted by Owner, become a part of this Contract. No Work related to any submittal may be performed by Contractor until Owner has completed review of such submittal with no exception noted. Owner’s review and stamping of any Required Submittal will be for the sole purpose of examining the general management, design, and details of the proposed Work, does not relieve Contractor of the entire responsibility for the performance of the Work in full compliance with, and as required by or pursuant to this Contract, and may not be regarded as any assumption of risk or liability by Owner.

D. Responsibility for Delay. Contractor is responsible for any delay in the Work due to delay in providing Required Submittals conforming to this Contract.

1.4 Review and Interpretation of Contract Provisions

Contractor represents and warrants that it has carefully reviewed this Contract, including all of its Attachments, and the drawings identified in Attachment C, all of which are by this reference incorporated into and made a part of this Contract. Contractor must, at no increase in the Contract Price, provide workmanship, equipment, materials, and supplies that fully conform to this Contract. Whenever any equipment, materials or supplies are specified or described in this Contract by using the name or other identifying feature of a proprietary product or the name or other identifying feature of a particular manufacturer or vendor, the specific item mentioned is understood as establishing the type, function and quality desired. Other manufacturers' or vendors' products may be accepted, provided that the products proposed are equivalent in substance and function to those named as determined by Owner in its sole and absolute discretion.

Contractor must promptly notify Owner of any discrepancy, error, omission, ambiguity, or conflict among any of the provisions of this Contract before proceeding with any Work affected thereby. If Contractor fails to give such notice to Owner, then the subsequent decision of Owner as to which provision of this Contract governs is final, and any corrective work required does not entitle Contractor to any damages, to any compensation in excess of the Contract Price, or to any delay or extension of the Contract Time.

When the equipment, materials, or supplies furnished by Contractor cannot be installed as specified in this Contract, Contractor must, without any increase in the Contract Price, make all modifications required to properly install the equipment, materials, or supplies. Any such modification is subject to the prior review and consent of Owner.

1.5 Conditions at the Work Site; Record Drawings

Contractor represents and warrants that it has had a sufficient opportunity to conduct a thorough investigation of the Work Site and the surrounding area and has completed such investigation to its satisfaction. Contractor will have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time based upon conditions found at, or in the vicinity of, the Work Site. When information pertaining to subsurface, underground or other concealed conditions, soils analysis, borings, test pits, utility locations or conditions, buried structures, condition of existing structures, and other investigations is or has been provided by Owner, or is or has been otherwise made available to Contractor by Owner, such information is or has been provided or made available solely for the convenience of Contractor and is not part of this Contract. Owner assumes no responsibility whatever in respect to the sufficiency or accuracy of such information, and there is no guaranty or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Work or the Work Site, or that the conditions indicated are representative of those existing at any particular location, or that the conditions indicated may not change, or that unanticipated conditions may not be present.

Contractor is solely responsible for locating all existing underground installations by prospecting no later than two workdays prior to any scheduled excavation or trenching, whichever is earlier. Contractor must check all dimensions, elevations, and quantities indicated in this Contract within the same time period as set forth above for prospecting underground installations. Contractor must lay out the Work in accordance with this Contract and must establish and maintain such locations, lines and levels. Wherever pre-existing work is encountered, Contractor must verify and be responsible for dimensions and location of such pre-existing work. Contractor must notify Owner of any discrepancy between the dimensions, elevations and quantities indicated in this Contract and the conditions of the Work Site or any other errors, omissions or discrepancies which Contractor may discover during such inspections. Full instructions will be furnished by Owner should such error, omission, or discrepancy be discovered, and Contractor must carry out such instructions as if originally specified and without any increase in Contract Price.

Before Final Acceptance of the Work, Contractor must submit to Owner two sets of Drawings of Record, unless a greater number is specified elsewhere in this Contract, indicating all field deviations from Attachment B or the drawings identified in Attachment C.

1.6 Technical Ability to Perform

Contractor represents and warrants that it is sufficiently experienced and competent, and has the necessary capital, facilities, plant, organization, and staff, to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.7 Financial Ability to Perform

Contractor represents and warrants that it is financially solvent, and Contractor has the financial resources necessary to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.8 Time

Contractor represents and warrants that it is ready, willing, able and prepared to begin the Work on the Commencement Date and that the Contract Time is sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract Price, all with due regard to all natural and man-made conditions that may affect the Work or the Work Site and all difficulties, hindrances, and delays that may be incident to the Work.

1.9 Safety at the Work Site

Contractor is solely and completely responsible for providing and maintaining safe conditions at the Work Site, including the safety of all persons and property during performance of the Work. This requirement applies continuously and is not limited to normal working hours.

Contractor must take all safety precautions as necessary to comply with all applicable laws and to prevent injury to persons and damage to property.

Contractor must conduct all of its operations without interruption or interference with vehicular and pedestrian traffic on public and private rights-of-way, unless it has obtained permits therefor from the proper authorities. If any public or private right-of-way are rendered unsafe by Contractor's operations, Contractor must make such repairs or provide such temporary ways or guards as are acceptable to the proper authorities.

1.10 Cleanliness of the Work Site and Environs

Contractor must keep the Work Site and adjacent areas clean at all times during performance of the Work and must, upon completion of the Work, leave the Work Site and adjacent areas in a clean and orderly condition.

1.11 Damage to the Work, the Work Site, and Other Property

The Work and everything pertaining thereto is provided, performed, completed, and maintained at the sole risk and cost of Contractor from the Commencement Date until Final Payment. Contractor is fully responsible for the protection of all public and private property and all persons. Without limiting the foregoing, Contractor must, at its own cost and expense, provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work in order to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing is not explicitly specified, and support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbs, sidewalks, fixtures and landscaping of all kinds and all other public or private property that may be encountered or endangered in providing, performing and completing the Work. Contractor will have no claim against Owner because of any damage or loss to the Work or to Contractor's equipment, materials, or supplies from any cause whatsoever, including damage or loss due to simultaneous work by others. Contractor must, promptly and without charge to Owner, repair or replace, to the satisfaction of Owner, any damage done to, and any loss suffered by, the Work and any damage done to, and any loss suffered by, the Work Site or other property as a result of the Work. Notwithstanding any other provision of this Contract, Contractor's obligations under this Section exist without regard to, and may not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this Section.

1.12 Subcontractors and Suppliers

A. Approval and Use of Subcontractors and Suppliers. Contractor must perform the Work with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All subcontractors, suppliers, and subcontracts used by Contractor must be acceptable to, and approved in advance by, Owner. Owner's approval of any subcontractor, supplier, and subcontract does not relieve Contractor of full responsibility and liability for the provision, performance, and completion of the Work in full compliance with, and as required by or pursuant to, this Contract. All Work

performed under any subcontract is subject to all of the provisions of this Contract in the same manner as if performed by employees of Contractor. Every reference in this Contract to “Contractor” is deemed also to refer to all subcontractors and suppliers of Contractor. Every subcontract must include a provision binding the subcontractor or supplier to all provisions of this Contract.

B. Removal of Subcontractors and Suppliers. If any subcontractor or supplier fails to perform the part of the Work undertaken by it in a manner satisfactory to Owner, Contractor must immediately upon notice from Owner terminate such subcontractor or supplier. Contractor will have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination.

1.13 Simultaneous Work By Others

Owner has the right to perform or have performed such other work as Owner may desire in, about, or near the Work Site during the performance of the Work by Contractor. Contractor must make every reasonable effort to perform the Work in such manner as to enable both the Work and such other work to be completed without hindrance or interference from each other. Contractor must afford Owner and other contractors reasonable opportunity for the execution of such other work and must properly coordinate the Work with such other work.

1.14 Occupancy Prior to Final Payment

Owner will have the right, at its election, to occupy, use, or place in service any part of the Work prior to Final Payment. Such occupancy, use, or placement in service must be conducted in such manner as not to damage any of the Work or to unreasonably interfere with the progress of the Work. No such occupancy, use, or placement in service may be construed as an acceptance of any of the Work or a release or satisfaction of Contractor’s duty to insure and protect the Work, nor may it, unless conducted in an unreasonable manner, be considered as an interference with Contractor’s provision, performance, or completion of the Work.

1.15 Owner’s Right to Terminate or Suspend Work for Convenience

A. Termination or Suspension for Convenience. Owner has the right, for its convenience, to terminate or suspend the Work in whole or in part at any time by written notice to Contractor. Every such notice must state the extent and effective date of such termination or suspension. On such effective date, Contractor must, as and to the extent directed, stop Work under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Work under existing orders and subcontracts, cancel any outstanding orders or subcontracts that may be cancelled, and take any action necessary to protect any property in its possession in which Owner has or may acquire any interest and to dispose of such property in such manner as may be directed by Owner.

B. Payment for Completed Work. In the event of any termination pursuant to Subsection 1.15A above, Owner must pay Contractor (1) such direct costs, excluding overhead, as Contractor has paid or incurred for all Work done in compliance with, and as required by or

pursuant to, this Contract up to the effective date of termination together with ten percent of such costs for overhead and profit; and (2) such other costs pertaining to the Work, exclusive of overhead and profit, as Contractor may have reasonably and necessarily incurred as the result of such termination. Any such payment may be offset by any prior payment or payments and is subject to Owner's rights to withhold and deduct as provided in this Contract.

ARTICLE II: CHANGES AND DELAYS

2.1 Changes

Owner has the right, by written order executed by Owner, to make changes in the Contract, the Work, the Work Site, and the Contract Time ("*Change Order*"). If any Change Order causes an increase or decrease in the amount of the Work, an equitable adjustment in the Contract Price or Contract Time may be made. All claims by Contractor for an equitable adjustment in either the Contract Price or the Contract Time must be made within two business days following receipt of such Change Order, and may, if not made prior to such time, be conclusively deemed to have been waived. No decrease in the amount of the Work caused by any Change Order will entitle Contractor to make any claim for damages, anticipated profits, or other compensation.

2.2 Delays

A. Extensions for Unavoidable Delays. For any delay that may result from causes that could not be avoided or controlled by Contractor, Contractor must, upon timely written application, be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time will be allowed for any other delay in completion of the Work.

B. No Compensation for Delays. No payment, compensation, damages, or adjustment of any kind, other than the extension of the Contract Time provided in Subsection 2.2A above, may be made to, or claimed by, Contractor because of hindrances or delays from any cause in the commencement, prosecution, or completion of the Work, whether caused by Owner or any other party and whether avoidable or unavoidable.

ARTICLE III: CONTRACTOR'S RESPONSIBILITY FOR DEFECTIVE WORK

3.1 Inspection; Testing; Correction of Defects

A. Inspection. Until Final Payment, all parts of the Work are subject to inspection and testing by Owner or its designated representatives. Contractor must furnish, at its own expense, all reasonable access, assistance, and facilities required by Owner for such inspection and testing.

B. Re-Inspection. Re-inspection and re-testing of any Work may be ordered by Owner at any time, and, if so ordered, any covered or closed Work must be uncovered or opened

by Contractor. If the Work is found to be in full compliance with this Contract, then Owner must pay the cost of uncovering, opening, re-inspecting, or re-testing, as the case may be. If such Work is not in full compliance with this Contract, then Contractor must pay such cost.

C. Correction. Until Final Payment, Contractor must, promptly and without charge, repair, correct, or replace all or any part of the Work that is defective, damaged, flawed, or unsuitable or that in any way fails to conform strictly to the requirements of this Contract.

3.2 Warranty of Work

A. Scope of Warranty. Contractor warrants that the Work and all of its components will be free from defects and flaws in design, workmanship, and materials; must strictly conform to the requirements of this Contract; and will be fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Contract. The warranty herein expressed is in addition to any other warranties expressed in this Contract, or expressed or implied by law, which are hereby reserved unto Owner.

B. Repairs; Extension of Warranty. Contractor, promptly and without charge, must correct any failure to fulfill the above warranty that may be discovered or develop at any time within one year after Final Payment or such longer period as may be prescribed in Attachment B or Attachment D to this Contract or by law. The above warranty may be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and Contractor's obligation to correct Work may be extended for a period of one year from the date of such repair or replacement. The time period established in this Subsection 3.2B relates only to the specific obligation of Contractor to correct Work and may not be construed to establish a period of limitation with respect to other obligations that Contractor has under this Contract.

C. Subcontractor and Supplier Warranties. Whenever Attachment B or Attachment D requires a subcontractor or supplier to provide a guaranty or warranty, Contractor is solely responsible for obtaining said guaranty or warranty in form satisfactory to Owner and assigning said warranty or guaranty to Owner. Acceptance of any assigned warranties or guaranties by Owner is a precondition to Final Payment and does not relieve Contractor of any of its guaranty or warranty obligations under this Contract.

3.3 Owner's Right to Correct

If, within two business days after Owner gives Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 of this Contract, Contractor neglects to make, or undertake with due diligence to make, the necessary corrections, then Owner is entitled to make, either with its own forces or with contract forces, the corrections and to recover from Contractor all resulting costs, expenses, losses, or damages, including attorneys' fees and administrative expenses.

ARTICLE IV: FINANCIAL ASSURANCES

4.1 Bonds

Contemporaneous with Contractor's execution of this Contract, Contractor must provide a Performance Bond and a Labor and Material Payment Bond, on forms provided by, or otherwise acceptable to, Owner, from a surety company licensed to do business in the State of Illinois with a general rating of A and a financial size category of Class X or better in Best's Insurance Guide, each in the penal sum of the Contract Price ("*Bonds*"). Contractor, at all times while providing, performing, or completing the Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, must maintain and keep in force, at Contractor's expense, the Bonds required hereunder.

4.2 Insurance

Contemporaneous with Contractor's execution of this Contract, Contractor must provide certificates and policies of insurance evidencing the minimum insurance coverages and limits set forth in Attachment A. For good cause shown, Owner may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion. Such policies must be in a form, and from companies, acceptable to Owner. Such insurance must provide that no change, modification in, or cancellation of any insurance becomes effective until the expiration of 30 days after written notice thereof has have been given by the insurance company to Owner. Contractor must, at all times while providing, performing, or completing the Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Contractor's expense, the minimum insurance coverages and limits set forth in Attachment A.

4.3 Indemnification

Contractor hereby agrees to and will indemnify, save harmless, and defend Owner and all of it elected officials, officers, employees, attorneys, agents, and representatives against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Contractor's performance of, or failure to perform, the Work or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Contractor, except to the extent caused solely by the negligence of Owner.

ARTICLE V: PAYMENT

5.1 Contract Price

Owner must pay to Contractor, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Contractor must accept in full satisfaction for providing, performing, and completing the Work, the amount or amounts set

forth in Attachment A (the “*Contract Price*”), subject to any additions, deductions, or withholdings provided for in this Contract.

5.2 **Taxes and Benefits**

Owner is exempt from and will not be responsible to pay, or reimburse Contractor for, any state or local sales, use, or excise taxes. The Contract Price includes all other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, or premium is hereby waived and released by Contractor.

5.3 **Progress Payments**

A. **Payment in Installments.** The Contract Price must be paid in monthly installments in the manner set forth in Attachment A (“*Progress Payments*”).

B. **Pay Requests.** Contractor must, as a condition precedent to its right to receive each Progress Payment, submit to Owner a pay request in the form provided by Owner (“*Pay Request*”). The first Pay Request must be submitted not sooner than 30 days following commencement of the Work. Owner may, by written notice to Contractor, designate a specific day of each month on or before which Pay Requests must be submitted. Each Pay Request must include (a) Contractor’s certification of the value of, and partial or final waivers of lien covering, all Work for which payment is then requested and (b) Contractor’s certification that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.

C. **Work Entire.** This Contract and the Work are entire and the Work as a whole is of the essence of this Contract. Notwithstanding any other provision of this Contract, each and every part of this Contract and of the Work are interdependent and common to one another and to Owner’s obligation to pay all or any part of the Contract Price or any other consideration for the Work. Any and all Progress Payments made pursuant to this Article are provided merely for the convenience of Contractor and for no other purpose.

5.4 **Final Acceptance and Final Payment**

A. **Notice of Completion.** When the Work has been completed and is ready in all respects for acceptance by Owner, Contractor must notify Owner and request a final inspection (“*Notice of Completion*”). Contractor’s Notice of Completion must be given sufficiently in advance of the Completion Date to allow for scheduling of the final inspection and for completion or correction before the Completion Date of any items identified by such inspection as being defective, damaged, flawed, unsuitable, nonconforming, incomplete, or otherwise not in full compliance with, or as required by or pursuant to, this Contract (“*Punch List Work*”).

B. Punch List and Final Acceptance. The Work may be finally accepted when, and only when, the whole and all parts thereof have been completed to the satisfaction of Owner in full compliance with, and as required by or pursuant to, this Contract. Upon receipt of Contractor's Notice of Completion, Owner must make a review of the Work and notify Contractor in writing of all Punch List Work, if any, to be completed or corrected. Following Contractor's completion or correction of all Punch List Work, Owner must make another review of the Work and prepare and deliver to Contractor either a written notice of additional Punch List Work to be completed or corrected or a written notice of final acceptance of the Work ("*Final Acceptance*").

C. Final Payment. As soon as practicable after Final Acceptance, Contractor must submit to Owner a properly completed final Pay Request in the form provided by Owner ("*Final Pay Request*"). Owner must pay to Contractor the balance of the Contract Price, after deducting therefrom all charges against Contractor as provided for in this Contract ("*Final Payment*"). Final Payment must be made not later than 60 days after Owner approves the Final Pay Request. The acceptance by Contractor of Final Payment will operate as a full and complete release of Owner of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to Contractor for anything done, furnished for, arising out of, relating to, or in connection with the Work or for or on account of any act or neglect of Owner arising out of, relating to, or in connection with the Work.

5.5 Liens

A. Title. Nothing in this Contract may be construed as vesting in Contractor any right of property in any equipment, materials, supplies, and other items provided under this Contract after they have been installed in, incorporated into, attached to, or affixed to, the Work or the Work Site. All such equipment, materials, supplies, and other items will, upon being so installed, incorporated, attached or affixed, become the property of Owner, but such title will not release Contractor from its duty to insure and protect the Work in accordance with the requirements of this Contract.

B. Waivers of Lien. Contractor must, from time to time at Owner's request and in any event prior to Final Payment, furnish to Owner such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of Owner, that no lien against the Work or the public funds held by Owner exists in favor of any person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract ("*Lien*") and that no right to file any Lien exists in favor of any person whatsoever.

C. Removal of Liens. If at any time any notice of any Lien is filed, then Contractor must, promptly and without charge, discharge, remove, or otherwise dispose of such Lien. Until such discharge, removal, or disposition, Owner will have the right to retain from any money payable hereunder an amount that Owner, in its sole judgment, deems necessary to satisfy such Lien and to pay the costs and expenses, including attorneys' fees and administrative expenses, of any actions brought in connection therewith or by reason thereof.

D. Protection of Owner Only. This Section does not operate to relieve Contractor's surety or sureties from any of their obligations under the Bonds, nor may it be deemed to vest any right, interest, or entitlement in any subcontractor or supplier. Owner's retention of funds pursuant to this Section is deemed solely for the protection of its own interests pending removal of such Liens by Contractor, and Owner will have no obligation to apply such funds to such removal but may, nevertheless, do so where Owner's interests would thereby be served.

5.6 Deductions

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner will have the right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Contractor is liable under this Contract; (3) state or local sales, use, or excise taxes from which Owner is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of subcontractors, suppliers, or other persons regardless of merit; (6) delay in the progress or completion of the Work; (7) inability of Contractor to complete the Work; (8) failure of Contractor to properly complete or document any Pay Request; (9) any other failure of Contractor to perform any of its obligations under this Contract; or (10) the cost to Owner, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.3 of this Contract.

B. Use of Withheld Funds. Owner is entitled to retain any and all amounts withheld pursuant to Subsection 5.6A above until Contractor has either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner is entitled to apply any money withheld or any other money due Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Contractor under this Contract.

ARTICLE VI: DISPUTES AND REMEDIES

6.1 Dispute Resolution Procedure

A. Notice of Disputes and Objections. If Contractor disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of Owner, Contractor may notify Owner in writing of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof; provided, however, that Contractor must, nevertheless, proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Owner, without regard to such dispute or objection. Unless Contractor so notifies Owner within two business days after receipt of such requirement, direction, instruction,

interpretation, determination, or decision, Contractor is conclusively deemed to have waived all such disputes or objections and all claims based thereon.

B. Negotiation of Disputes and Objections. To avoid and settle without litigation any such dispute or objection, Owner and Contractor agree to engage in good faith negotiations. Within three business days after Owner's receipt of Contractor's written notice of dispute or objection, a conference between Owner and Contractor will be held to resolve the dispute. Within three business days after the end of the conference, Owner must render its final decision, in writing, to Contractor. If Contractor objects to the final decision of Owner, then it must, within three business days, give Owner notice thereof and, in such notice, must state its final demand for settlement of the dispute. Unless Contractor so notifies Owner, Contractor will be conclusively deemed (1) to have agreed to and accepted Owner's final decision and (2) to have waived all claims based on such final decision.

6.2 Contractor's Remedies

If Owner fails or refuses to satisfy a final demand made by Contractor pursuant to Section 6.1 of this Contract, or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of Contractor, within 10 days after receipt of such demand, then Contractor will be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity.

6.3 Owner's Remedies

If it should appear at any time prior to Final Payment that Contractor has failed or refused to prosecute, or has delayed in the prosecution of, the Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Contract on or before the Completion Date, or has attempted to assign this Contract or Contractor's rights under this Contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Contract or has failed to pay its debts as they come due ("*Event of Default*"), and has failed to cure any such Event of Default within five business days after Contractor's receipt of written notice of such Event of Default, then Owner will have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Owner may require Contractor, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work Site any such Work; to accelerate all or any part of the Work; and to take any or all other action necessary to bring Contractor and the Work into strict compliance with this Contract.
2. Owner may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph 1 above and withhold or

recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by Owner in connection therewith.

3. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.
4. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
5. Owner may, without terminating this Contract, terminate Contractor's rights under this Contract and, for the purpose of completing or correcting the Work, evict Contractor and take possession of all equipment, materials, supplies, tools, appliances, plans, specifications, schedules, manuals, drawings, and other papers relating to the Work, whether at the Work Site or elsewhere, and either complete or correct the Work with its own forces or contracted forces, all at Contractor's expense.
6. Upon any termination of this Contract or of Contractor's rights under this Contract, and at Owner's option exercised in writing, any or all subcontracts and supplier contracts of Contractor will be deemed to be assigned to Owner without any further action being required, but Owner may not thereby assume any obligation for payments due under such subcontracts and supplier contracts for any Work provided or performed prior to such assignment.
7. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
8. Owner may recover any damages suffered by Owner.

6.4 Owner's Additional Remedy for Delay

If the Work is not completed by Contractor, in full compliance with, and as required by or pursuant to, this Contract, within the Contract Time as such time may be extended by Change Order, then Owner may invoke its remedies under Section 6.3 of this Contract or may, in the exercise of its sole and absolute discretion, permit Contractor to complete the Work but charge to Contractor, and deduct from any Progress or Final Payments, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the Completion Date, computed on the basis of the "*Per Diem Administrative Charge*" set forth in Attachment A, as well as any additional damages caused by such delay.

6.5 Terminations and Suspensions Deemed for Convenience

Any termination or suspension of Contractor's rights under this Contract for an alleged default that is ultimately held unjustified will automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.15 of this Contract.

**ARTICLE VII: LEGAL RELATIONSHIPS
AND REQUIREMENTS**

7.1 Binding Effect

This Contract is binding on Owner and Contractor and on their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party is deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.2 Relationship of the Parties

Contractor will act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Contract may be construed (1) to create the relationship of principal and agent, partners, or joint venturers between Owner and Contractor or (2) except as provided in Paragraph 6.3(6) above, to create any relationship between Owner and any subcontractor or supplier of Contractor.

7.3 No Collusion/Prohibited Interests

Contractor hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it is found that Contractor has, in procuring this Contract, colluded with any other person, firm, or corporation, then Contractor will be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract will, at Owner's option, be null and void.

Contractor hereby represents and warrants that neither Contractor nor any person affiliated with Contractor or that has an economic interest in Contractor or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither Contractor nor any person affiliated with Contractor or that has an economic interest in Contractor or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is, directly or indirectly, engaged in, or facilitating, the Work on behalf of any such person, group, entity or nation.

7.4 Assignment

Contractor may not (1) assign this Contract in whole or in part, (2) assign any of Contractor's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval will not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Contractor.

7.5 Confidential Information

All information supplied by Owner to Contractor for or in connection with this Contract or the Work must be held confidential by Contractor and may not, without the prior express written consent of Owner, be used for any purpose other than performance of the Work.

7.6 No Waiver

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by Owner, nor any order by Owner for the payment of money, nor any payment for, or use, occupancy, possession, or acceptance of, the whole or any part of the Work by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission of Owner may constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming or incomplete Work, equipment, materials, or supplies, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Contractor; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

7.7 No Third Party Beneficiaries

No claim as a third party beneficiary under this Contract by any person, firm, or corporation other than Contractor may be made or be valid against Owner.

7.8 Notices

All notices required or permitted to be given under this Contract must be in writing and are deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner must be addressed to, and delivered at, the following address:

Village of Winnetka
510 Green Bay Road
Winnetka, IL 60093
Attention: Timothy Sloth

with a copy to:
Elrod Friedman LLP
325 N LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Peter M. Friedman

Notices and communications to Contractor must be addressed to, and delivered at, the following address:

A Lamp Concrete Contractors, Inc.
1900 Wright Boulevard
Schaumburg, IL 60193
Attention: Jeff Moyer

with a copy to:

The foregoing may not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section, Owner and Contractor each have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address is effective until actually received.

7.9 Governing Laws

This Contract and the rights of Owner and Contractor under this Contract will be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

7.10 Changes in Laws

Unless otherwise explicitly provided in this Contract, any reference to laws includes such laws as they may be amended or modified from time to time.

7.11 Compliance with Laws

A. Compliance Required. Contractor must give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq. (see Subsection C of this Section) (a copy of Owner's ordinance ascertaining the prevailing rate of wages, in effect as of the date of this Contract, has been attached as an Appendix to this Contract; if the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid, the revised rate applies to this Contract); any other applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes

requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the Public Works Discrimination Act, 775 ILCS 10/0.01 et seq.; and any statutes regarding safety or the performance of the Work, including the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1 et seq., and the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 et seq.

B. Liability for Fines, Penalties. Contractor is solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors' or suppliers', performance of, or failure to perform, the Work or any part thereof.

C. Prevailing Wage Act. Contractor and each subcontractor, in order to comply with the Prevailing Wage Act, 820 ILCS 130/0.01 et seq. (the "Act"), must submit to the Village a certified payroll on a monthly basis, in accordance with Section 5 of the Act. The certified payroll must consist of a complete copy of those records required to be made and kept by the Act. The certified payroll must be accompanied by a statement signed by the contractor or subcontractor that certifies that (1) such records are true and accurate, (2) the hourly rate paid is not less than the general prevailing rate of hourly wages required by the Act, and (3) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. Contractor may rely on the certification of a subcontractor, provided that Contractor does not knowingly rely on a subcontractor's false certification. On two business days' notice, Contractor and each subcontractor must make available for inspection the records required to be made and kept by the Act (i) to the Village and its officers and agents and to the Director of the Illinois Department of Labor and his or her deputies and agents and (ii) at all reasonable hours at a location within the State.

D. Required Provisions Deemed Inserted. Every provision of law required by law to be inserted into this Contract is deemed to be inserted herein.

7.12 Compliance with Patents

A. Assumption of Costs, Royalties, and Fees. Contractor will pay or cause to be paid all costs, royalties, and fees arising from the use on, or the incorporation into, the Work, of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions.

B. Effect of Contractor Being Enjoined. Should Contractor be enjoined from furnishing or using any equipment, materials, supplies, tools, appliances, devices, processes, or inventions supplied or required to be supplied or used under this Contract, Contractor must promptly offer substitute equipment, materials, supplies, tools, appliances, devices, processes, or inventions in lieu thereof, of equal efficiency, quality, suitability, and market value, for review by Owner. If Owner should disapprove the offered substitutes and should elect, in lieu

of a substitution, to have supplied, and to retain and use, any such equipment, materials, supplies, tools, appliances, devices, processes, or inventions as may by this Contract be required to be supplied, Contractor must pay such royalties and secure such valid licenses as may be requisite and necessary for Owner to use such equipment, materials, supplies, tools, appliances, devices, processes, or inventions without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should Contractor neglect or refuse to make any approved substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then Owner will have the right to make such substitution, or Owner may pay such royalties and secure such licenses and charge the cost thereof against any money due Contractor from Owner or recover the amount thereof from Contractor and its surety or sureties notwithstanding that Final Payment may have been made.

7.13 Time

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days is construed to refer to calendar days.

7.14 Severability

The provisions of this Contract will be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract is held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract will be in any way affected thereby.

7.15 Entire Agreement

This Contract sets forth the entire agreement of Owner and Contractor with respect to the accomplishment of the Work and the payment of the Contract Price therefor, and there are no other understandings or agreements, oral or written, between Owner and Contractor with respect to the Work and the compensation therefor.

7.16 Amendments

No modification, addition, deletion, revision, alteration or other change to this Contract is effective unless and until such change is reduced to writing and executed and delivered by Owner and Contractor.

CONTRACT

IN WITNESS WHEREOF, Owner and Contractor have caused this Contract to be executed by their properly authorized representatives in two original counterparts as of the Effective Date.

Village of Winnetka

By: _____

Name: _____

Title: _____

Attest:

By: _____

Name: _____

Title: _____

[name of contractor]

By: _____

Name: _____

Title: _____

Attest:

By: _____

Name: _____

Title: _____

STATE OF ILLINOIS)
)
COUNTY OF _____) SS

CONTRACTOR’S CERTIFICATION

[contractor’s executing officer], being first duly sworn on oath, deposes and states that all statements herein made are made on behalf of Contractor, that this deponent is authorized to make them, and that the statements contained herein are true and correct.

Contractor deposes, states, and certifies that Contractor is not barred from contracting with a unit of state or local government as a result of (i) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; or (ii) a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) (the “*Patriot Act*”) or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001.

DATED: _____, 20____.

[name of contractor]

By: _____

Name: _____

Title: _____

Attest:

By: _____

Name: _____

Title: _____

Subscribed and Sworn to before me on _____, 20____.

My Commission expires: _____

Notary Public

(SEAL)

**VILLAGE OF WINNETKA
CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

ATTACHMENT A

SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS

1. Project:

The work includes pavement, curb, sidewalk, planter and tree removal; new curb & gutter, brick and concrete sidewalk, tree grates, planters, brick paver crosswalks, trees, landscape furnishings, pavement markings, drainage structures, storm sewer, water main, adjusting/replacing frames and grates/lids, and related collateral work as more fully described and set forth in Attachments B and C.

2. Work Site:

The Work shall be performed at the following Work Site:

The property commonly referred to as 93 Green Bay Road as well as the adjacent Green Bay Road right-of-way.

3. Permits, Licenses, Approvals, and Authorizations:

Contractor must obtain all required governmental permits, licenses, approvals, and authorizations, except:



No Exceptions

4. Commencement Date:



the date of execution of the Contract by Owner.



_____ days after execution of the Contract by Owner.



May 15, 2023

5. Completion Date:

☐ _____ days after the Commencement Date plus extensions, if any, authorized by a Change Order issued pursuant to Subsection 2.2A of the Contract

☒ August 4, 2023, plus extensions, if any, authorized by a Change Order issued pursuant to Subsection 2.2A of the Contract

6. Insurance Coverage:

A. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory;
- (2) Employer's Liability: \$1,000,000 injury-per occurrence; \$1,000,000 disease-per employee; \$1,000,000 disease-policy limit

Such insurance must evidence that coverage applies in the State of Illinois.

B. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than \$2,000,000 for vehicles owned, non-owned, or rented.

All employees must be included as insureds.

C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:

- (1) General Aggregate: \$5,000,000. See Subsection F below regarding use of umbrella coverage.
- (2) Bodily Injury: \$2,000,000 per person; \$2,000,000 per occurrence
- (3) Property Damage: \$2,000,000 per occurrence and \$5,000,000 aggregate.

Coverage must include:

- Premises / Operations
- Products / Completed Operations (to be maintained for two years after Final Payment)
- Independent Contractors
- Personal Injury (with Employment Exclusion deleted)
- Broad Form Property Damage Endorsement

- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- Bodily Injury and Property Damage

“X”, “C”, and “U” exclusions must be deleted.

Railroad exclusions must be deleted if Work Site is within 50 feet of any railroad track.

All employees must be included as insured.



- D. Builders Risk Insurance. This insurance must be written in completed value form, must protect Contractor and Owner against “all risks” of direct physical loss to buildings, structures, equipment, and materials to be used in providing, performing, and completing the Work, including without limitation fire extended coverage, vandalism and malicious mischief, sprinkler leakage, flood, earth movement and collapse, and must be designed for the circumstances that may affect the Work.

This insurance must be written with limits not less than the insurable value of the Work at completion. The insurable value must include the aggregate value of Owner-furnished equipment and materials to be constructed or installed by Contractor.

This insurance must include coverage while equipment or materials are in warehouses, during installation, during testing, and after the Work is completed, but prior to Final Payment. This insurance must include coverage while Owner is occupying all or any part of the Work prior to Final Payment without the need for the insurance company’s consent.



- E. Owner’s and Contractor’s Protective Liability Insurance. Contractor, at its sole cost and expense, must purchase this Insurance in the name of Owner with a combined single limit for bodily injury and property damage of not less than \$1,000,000.

- F. Umbrella Policy. The required coverage may be in the form of an umbrella policy above \$2,000,000 primary coverage. All umbrella policies must provide excess coverage over underlying insurance on a following-form basis so that, when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover that loss.



- G. Deductible. Each policy must have a deductible or self-insured retention of not more than \$10,000.



H. Owner as Additional Insured. Owner must be named as an Additional Insured on the following policies:

Comprehensive General Liability, Umbrella Policy, and Comprehensive Motor Vehicle Liability

The Additional Insured endorsement must identify Owner as follows:

The Village of Winnetka and its boards, commissions, committees, authorities, employees, agencies, officers, voluntary associations, and other units operating under the jurisdiction and within the appointment of its budget.



I. Other Parties as Additional Insureds. In addition to Owner, the following parties must be named as additional insured on the following policies:

Additional Insured

Policy or Policies

SAR, Incorporated,

D/B/A Tala Coffee Roasters

All Policies

7. **Contract Price:**

SCHEDULE OF PRICES



A. LUMP SUM CONTRACT

For providing, performing, and completing all Work, the total Contract Price of (*write in numbers only*):

\$ _____



All Work will be paid on a force account basis, using the terms of Section 109.04(b) of the IDOT Standard Specifications For Road And Bridge Construction 2012, without limitation to “extra work.” Contractor shall be paid in installments (see below). Contractor must submit Pay Requests including itemized statements of the cost of the Work, accompanied and supported by

statements and invoices for all labor, materials, transportation charges and other items of the Work, using standard Illinois Department of Transportation schedules and report forms.



B. UNIT PRICE CONTRACT

NOTE: If Owner has provided a separate form Schedule of Pricing attached to this Attachment A, then that Schedule of Prices will be used and this Subsection B should not be used. If Owner has not provided a separate form Schedule of Prices, then this Subsection B should be used.

For providing, performing, and completing all Work, the sum of the products resulting from multiplying the number of acceptable units of Unit Price Items listed below incorporated in the Work by the Unit Price set forth below for such Unit Price Item:

See Appendix 1 for Schedule of Prices

TOTAL CONTRACT PRICE (*write in numbers only*):

\$ 514,535.90



C. COMBINED LUMP SUM/UNIT PRICE CONTRACT

- (1) For providing, performing, and completing all Work related to ***[describe lump sum work]***, the total sum of (*write in numbers only*):

\$ _____

- (2) For providing, performing, and completing all Work related to ***[describe unit price work]***, the sum of the products resulting from multiplying the number of acceptable units of Unit Price Items listed below incorporated in the Work by the Unit Price set forth below for such Unit Price Item:

COMPLETE TABLE AS INDICATED

<u>Unit Price Item</u>	<u>Unit</u>	Approximate Number of <u>Units</u>	<u>Price Per Unit</u>	<u>Extension</u>
1			\$ _____	\$ _____
2			\$ _____	\$ _____

<u>Unit Price Item</u>	<u>Unit</u>	Approximate Number of <u>Units</u>	Price Per Unit	<u>Extension</u>
3			\$ _____	\$ _____

TOTAL CONTRACT PRICE, being the sum of (1) plus the extension of (2)
(write in numbers only):

\$ _____

- D. Any items of Work not specifically listed or referred to in the Schedule of Prices, or not specifically included for payment under any Unit Price Item, shall be deemed incidental to the Contract Price, shall not be measured for payment, and shall not be paid for separately except as incidental to the Contract Price, including without limitation extraordinary equipment repair, the cost of transportation, packing, cartage, and containers, the cost of preparing schedules and submittals, the cost or rental of small tools or buildings, the cost of utilities and sanitary conveniences, and any portion of the time of Bidder, its superintendents, or its office and engineering staff.

8. **Progress Payments:**

- A. General. Owner must pay to Contractor 90 percent of the Value of Work, determined in the manner set forth below, installed and complete in place up to the day before the Pay Request, less the aggregate of all previous Progress Payments. The total amount of Progress Payments made prior to Final Acceptance by Owner may not exceed 90 percent of the Contract Price.
- B. Value of Work. The Value of the Work will be determined as follows:
- (1) Lump Sum Items. For all Work to be paid on a lump sum basis, Contractor must, not later than 10 days after execution of the Contract and before submitting its first Pay Request, submit to Owner a schedule showing the value of each component part of such Work in form and with substantiating data acceptable to Owner ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule must equal the amount or amounts set forth in the Schedule of Prices for Lump Sum Work. An unbalanced Breakdown Schedule providing for overpayment of Contractor on component parts of the Work to be performed first will not be accepted. The Breakdown Schedule must be revised and resubmitted until acceptable to Owner. No payment may be made for any lump sum item until Contractor has submitted, and Owner has approved, an acceptable Breakdown Schedule.

Owner may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Work. If Contractor fails to submit a revised Breakdown Schedule that is acceptable to Owner, Owner will have the right either to suspend Progress and Final Payments for Lump Sum Work or to make such Payments based on Owner's determination of the value of the Work completed.

- (2) Unit Price Items. For all Work to be paid on a unit price basis, the value of such Work will be determined by Owner on the basis of the actual number of acceptable units of Unit Price Items installed and complete in place, multiplied by the applicable Unit Price set forth in the Schedule of Prices. The actual number of acceptable units installed and complete in place will be measured on the basis described in Attachment B to the Contract or, in the absence of such description, on the basis determined by Owner. The number of units of Unit Price Items stated in the Schedule of Prices are Owner's estimate only and may not be used in establishing the Progress or Final Payments due Contractor. The Contract Price will be adjusted to reflect the actual number of acceptable units of Unit Price Items installed and complete in place upon Final Acceptance.

- C. Application of Payments. All Progress and Final Payments made by Owner to Contractor will be applied to the payment or reimbursement of the costs with respect to which they were paid and will not be applied to or used for any pre-existing or unrelated debt between Contractor and Owner or between Contractor and any third party.

9. **Per Diem Administrative Charge:**



\$1,000 per calendar day



No Charge

10. **Standard Specifications:**

The Contract includes the following Illinois Department of Transportation standard specifications, each of which are incorporated into the Contract by reference:



"State of Illinois Standard Specifications for Road and Bridge Construction" (SSRB)

ATTACHMENT A

- ☒ "Standard Specifications for Water and Sewer Main Construction in Illinois" (SSWS)
- ☒ "Illinois Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

The Contract also includes Owner's Village Code and Building Codes.

References to any of these manuals, codes, and specifications means the latest editions effective on the date of the bid opening.

See Attachment D for any special project requirements.

**VILLAGE OF WINNETKA
CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

ATTACHMENT B

SPECIFICATIONS

[TO BE SUPPLIED BY OWNER]

**VILLAGE OF WINNETKA
CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

ATTACHMENT C

LIST OF DRAWINGS

SEE ATTACHED PROJECT DRAWINGS

<u>SHEET NOS.</u>	<u>SHEET TITLES</u>	<u>DATE LAST REVISED</u>
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**VILLAGE OF WINNETKA
CONTRACT FOR THE CONSTRUCTION OF
93 GREEN BAY ROAD SITE DEVELOPMENT**

ATTACHMENT D

SPECIAL PROJECT REQUIREMENTS

On November 22, 2022, the Illinois Environmental Protection Agency issued the Village of Winnetka a No Further Remediation Letter (NFR) for 93 Green Bay Road due to corrective action taken to address the leaking underground storage tanks (UST) that were removed from the northwest corner of the 93 Green Bay Road site.

Page three of the NFR letter, which is included as part of Attachment D, states the following:

Prior to commencement of any future excavation and/or construction in or near the contaminated zone of the remediation site, a safety plan for this remediation site is required that is consistent with the National Institute for Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities; Occupational Safety and Health Administration regulations, particularly in 39 CFR 1910 and 1926; state and local regulations; and other United States EPA guidance as provided. At a minimum, the plan should address possible work exposure if any future excavation and construction activities occur within the contaminated solid.

The Contractor for the 93 Green Bay Road site development project must have a safety plan as described above in place when performing excavation and/or construction near the contaminated zone on the 93 Green Bay Road site.

93 GREEN BAY ROAD SITE DEVELOPMENT - BID ANALYSIS - ORIGINAL BIDS

BID TABULATION - FEBRUARY 27, 2023				ENGINEER'S ESTIMATE OF COST		A LAMP CONCRETE	
ITEM #	DESCRIPTION	UNIT	APPROXIMATE NUMBER OF UNITS	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICES	EXTENDED AMOUNT
1	EARTH EXCAVATION	CU YD	50	\$ 22.00	\$ 1,100.00	\$ 80.00	\$ 4,000.00
2	AGGREGATE BASE COURSE, TYPE B	TON	225	\$ 35.00	\$ 7,875.00	\$ 50.00	\$ 11,250.00
3	PORTLAND CEMENT CONCRETE SIDEWALK 5 INCH	SQ FT	5,940	\$ 16.00	\$ 95,040.00	\$ 16.00	\$ 95,040.00
4	DETECTABLE WARNINGS	SQ FT	10	\$ 42.00	\$ 420.00	\$ 45.00	\$ 450.00
5	CURB REMOVAL	FOOT	83	\$ 16.00	\$ 1,328.00	\$ 10.00	\$ 830.00
6	SIDEWALK REMOVAL	SQ FT	530	\$ 7.00	\$ 3,710.00	\$ 2.00	\$ 1,060.00
7	PAVEMENT REMOVAL	SQ FT	7,300	\$ 12.00	\$ 87,600.00	\$ 1.20	\$ 8,760.00
8	RETAINING WALL REMOVAL	FOOT	25	\$ 125.00	\$ 3,125.00	\$ 35.00	\$ 875.00
9	ORNAMENTAL FENCE REMOVAL	L SUM	1	\$ 1,750.00	\$ 1,750.00	\$ 2,500.00	\$ 2,500.00
10	HOT-MIX ASPHALT PAVEMENT PATCH - FULL DEPTH, 6"	SQ YD	3	\$ 650.00	\$ 1,950.00	\$ 250.00	\$ 750.00
11	CONCRETE CURB, TYPE B	FOOT	70	\$ 20.00	\$ 1,400.00	\$ 64.00	\$ 4,480.00
12	HIGH BACK CURB	FOOT	52	\$ 400.00	\$ 20,800.00	\$ 110.00	\$ 5,720.00
13	CONSTRUCTION LAYOUT	L SUM	1	\$ 5,000.00	\$ 5,000.00	\$ 9,000.00	\$ 9,000.00
14	MOBILIZATION	L SUM	1	\$ 25,000.00	\$ 25,000.00	\$ 30,000.00	\$ 30,000.00
15	TRAFFIC CONTROL AND PROTECTION	L SUM	1	\$ 5,000.00	\$ 5,000.00	\$ 17,000.00	\$ 17,000.00
16	CONCRETE PLANTER CURB	FOOT	330	\$ 20.00	\$ 6,600.00	\$ 70.00	\$ 23,100.00
17	DECORATIVE PAVER BANDING (Village to provide brick pavers)	SQ FT	410	\$ 26.00	\$ 10,660.00	\$ 40.00	\$ 16,400.00
18	DETECTABLE WARNING PLATES	SQ FT	36	\$ 42.00	\$ 1,512.00	\$ 45.00	\$ 1,620.00
19	CURVED PRECAST CONCRETE PLANTER	L SUM	1	\$ 45,000.00	\$ 45,000.00	\$ 62,000.00	\$ 62,000.00
20	BENCHES	EACH	7	\$ 2,000.00	\$ 14,000.00	\$ 4,600.00	\$ 32,200.00
21	ORNAMENTAL METAL FENCE	FOOT	78	\$ 375.00	\$ 29,250.00	\$ 450.00	\$ 35,100.00
22	TRASH ENCLOSURE	FOOT	86	\$ 375.00	\$ 32,250.00	\$ 450.00	\$ 38,700.00
23	BIKE RACK	EACH	5	\$ 400.00	\$ 2,000.00	\$ 750.00	\$ 3,750.00
24	PLANTER POTS	EACH	5	\$ 2,300.00	\$ 11,500.00	\$ 1,300.00	\$ 6,500.00
25	LITTER RECEPTACLES	EACH	2	\$ 2,000.00	\$ 4,000.00	\$ 2,500.00	\$ 5,000.00
26	RECYCLING RECEPTACLES	EACH	2	\$ 2,000.00	\$ 4,000.00	\$ 3,000.00	\$ 6,000.00
27	RETAINING WALL COPING	L SUM	1	\$ 11,600.00	\$ 11,600.00	\$ 20,500.00	\$ 20,500.00
28	DECIDUOUS TREE, 4.5" CAL.	EACH	1	\$ 1,200.00	\$ 1,200.00	\$ 1,120.00	\$ 1,120.00
29	ORNAMENTAL TREE, MS 10' HT	EACH	5	\$ 850.00	\$ 4,250.00	\$ 670.00	\$ 3,350.00
30	SHRUBS, 24" SPR	EACH	8	\$ 85.00	\$ 680.00	\$ 86.25	\$ 690.00
31	PERENNIALS / GRASSES / GROUND COVER	SQ FT	1,400	\$ 25.00	\$ 35,000.00	\$ 7.00	\$ 9,800.00
32	PLANTING SOIL	CU YD	74	\$ 85.00	\$ 6,290.00	\$ 93.00	\$ 6,882.00
33	MULCH, SHREDDED HARDWOOD BARK, 3" DP	CU YD	13	\$ 85.00	\$ 1,105.00	\$ 86.00	\$ 1,118.00
34	UNDERGROUND CONDUIT, PVC, 3/4" DIA.	FOOT	102	\$ 10.00	\$ 1,020.00	\$ 16.00	\$ 1,632.00
35	UNDERGROUND CONDUIT, PVC, 2" DIA.	FOOT	229	\$ 12.00	\$ 2,748.00	\$ 19.50	\$ 4,465.50
36	UNDERGROUND CONDUIT, PVC, 4" DIA.	FOOT	236	\$ 18.00	\$ 4,248.00	\$ 32.25	\$ 7,611.00
37	HANDHOLE, PORTLAND CEMENT CONCRETE	EACH	2	\$ 2,250.00	\$ 4,500.00	\$ 2,100.00	\$ 4,200.00
38	ELECTRIC CABLE IN CONDUIT, 600V (XLP-TYPE USE) 1/C NO. 10	FOOT	2,212	\$ 1.00	\$ 2,212.00	\$ 1.40	\$ 3,096.80
39	ELECTRIC CABLE IN CONDUIT, 600V (XLP-TYPE USE) 1/C NO. 8	FOOT	1,470	\$ 1.15	\$ 1,690.50	\$ 1.60	\$ 2,352.00
40	ELECTRIC CABLE IN CONDUIT, 600V (XLP-TYPE USE) 1/C NO. 2/0	FOOT	152	\$ 5.00	\$ 760.00	\$ 8.05	\$ 1,223.60
41	ADJUST MONITORING WELLS	EACH	2	\$ 500.00	\$ 1,000.00	\$ 500.00	\$ 1,000.00
42	GFCI 20 AMP DUPLEX RECEPTACLE	EACH	6	\$ 725.00	\$ 4,350.00	\$ 430.00	\$ 2,580.00
43	LIGHTING CONTROLLER, SPECIAL (Village to provide lighting controller)	EACH	1	\$ 7,500.00	\$ 7,500.00	\$ 4,025.00	\$ 4,025.00
44	PEDESTRIAN LIGHT (Village to provide pedestrian light fixtures)	EACH	5	\$ 6,000.00	\$ 30,000.00	\$ 1,380.00	\$ 6,900.00
45	LIGHT POLE FOUNDATION, 18" DIAMETER	FOOT	25	\$ 250.00	\$ 6,250.00	\$ 275.00	\$ 6,875.00
46	PERFORMANCE AREA RECEPTACLE	EACH	2	\$ 1,200.00	\$ 2,400.00	\$ 1,265.00	\$ 2,530.00
47	B-BOX TO BE ADJUSTED	EACH	1	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
TOTAL - AS CALCULATED					\$ 551,173.50		\$ 514,535.90
TOTAL - AS READ							\$ 514,535.90



Agenda Item Executive Summary

TITLE: Approval of Annual Outdoor Seating Area Permits (Adoption)

PRESENTER: Kristin Kazenas

AGENDA DATE: March 7, 2023

CONSENT: Yes

ITEM TYPE: Consent Agenda

ITEM HISTORY:

Annual outdoor seating area permit approval, as required for commercial use of Village sidewalks (Village Code Section 12.04.070). Permits numbered 1 to 16 were approved at the February 21, 2023 Village Council Meeting. Additional applications were received subsequent to that meeting.

EXECUTIVE SUMMARY:

The Village Code requires Village Council permission for businesses to operate on public sidewalks. Eighteen Winnetka businesses have applied for outdoor seating permits. The applicants submitted proposed layout sketches and certificates of insurance showing at least \$1,000,000/ occurrence and \$2,000,000 general aggregate liability, naming the Village as an additional insured.

The Village's insurance broker is in the process of reviewing and approving the insurance certificates, and Public Works Director Gio McLean will inspect the requested table layouts. Staff will work with the applicants to assure appropriate passage of pedestrians.

RECOMMENDATION:

Consider approval of two 2023 Outdoor Seating Area Permit applications, pending final insurance certificate and table layout approval by the Village.

ATTACHMENTS:

1. 2023 Outdoor Seating Area Permit Applicants

Licensee	Business Address	Permit Number	# of Tables	# of Chairs
Fizz & Pop	566 Chestnut Suite 16	17	2	4
Original Green Bay Café	568 Green Bay Road	18	4	12



Agenda Item Executive Summary

TITLE: Ordinance No. MC-04-2023: Amending the Winnetka Village Code Regarding the Class X Special Use Liquor Permit Classification (Introduction/Adoption)

PRESENTER: Brian O'Connell

AGENDA DATE: March 7, 2023

CONSENT: No

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

None.

EXECUTIVE SUMMARY:

The Winnetka-Northfield-Glencoe Chamber of Commerce hosts a Farmers' Market event within the Village every Saturday for twenty-two weeks from June through October. The Chamber has inquired about licensing for vendors who wish to sell or serve alcohol during the market events. The current Village Code requires vendors to apply for a new Class X Special Event Liquor Permit every week at a cost of \$25 per week. The number of licenses is limited to a maximum of fifteen days per location in any twelve month period. Due to the restrictions outlined in the code, vendors who wish to sell and serve alcohol at the Farmers' Market for the duration of the season are prohibited from participating longer than fifteen weeks. Additionally, it is cost prohibitive to apply for a new license for each week of the event.

The Village attorney prepared a draft proposed amendment that would update the Class X liquor license to allow the vendors of the Farmers' Market to obtain a single license that would cover the duration of the market season and not require the vendors to obtain a separate Class X license for each day of the market. The fee of \$25 per day, with a maximum of \$75 per event for the Class X license will not change. A Farmers' Market vendor who applies for a license for the duration of the season will pay \$75 for the Class X license.

RECOMMENDATION:

Consider introduction and adoption of Ordinance No. MC-04-2023, Amending the Winnetka Village Code regarding the Class X Special Use Liquor Permit Classification

ATTACHMENTS:

1. Ordinance No. MC-04-2023: Amending the Winnetka Village Code Regarding the Class X Special Use Liquor Permit Classification

**AN ORDINANCE AMENDING THE WINNETKA VILLAGE CODE
REGARDING THE CLASS X SPECIAL USE LIQUOR PERMIT CLASSIFICATION**

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970 and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Section 11-42-10.1 of the Illinois Municipal Code, 65 ILCS 5/11-42-10.1, and Section 4-1 of the Illinois Liquor Control Act, 235 ILCS 5/4-1, provide the Village the authority to determine the number, kind, and classification of licenses for retail sales of alcoholic liquor; and

WHEREAS, Chapter 5.09 of the Winnetka Village Code ("***Village Code***") regulates the sale of alcoholic beverages within the Village ("***Liquor Control Regulations***"); and

WHEREAS, the Liquor Control Regulations require, among other things, any establishment that desires to sell alcoholic beverages within the Village to first obtain a license from the Village; and

WHEREAS, Section 5.09.100 of the Liquor Regulations establishes various liquor license classifications that authorize the sale of alcoholic beverages by certain types of establishments, subject to conditions; and

WHEREAS, Section 5.09.100.S of the Liquor Regulations establishes the Class X special use liquor license classification ("***Class X License***"), which authorizes Illinois licensed liquor retailers to sell or serve alcoholic beverages at picnics, outings, festivals, theater nights, or other such similar special occasions for consumption on the premises or within the area specifically designated for such license; and

WHEREAS, the Village Council desires to amend Section 5.09.100.S of the Liquor Regulations to make the administration of the Class X License more efficient for the Village and to allow licensees who desire to sell liquor at the Farmers' Market to obtain one Call X License instead of multiple Class X Licenses ("***Proposed Amendment***"); and

WHEREAS, the Village Council has determined that adoption of the Proposed Amendment as set forth in this Ordinance is in the best interest of the Village and its residents;

NOW, THEREFORE, the Council of the Village of Winnetka do ordain as follows:

SECTION 1: RECITALS. The foregoing recitals are hereby incorporated into this Section as the findings of the Village Council, as if fully set forth herein.

SECTION 2: CLASSIFICATION OF LICENSES. Section 5.09.100, titled "Classification of Licenses," of Chapter 5.09, titled "Liquor Control Regulations," of Title 5,

Additions are bold and double-underlined; deletions are struck through.

titled “Business Licenses and Regulations,” of the Village Code is hereby amended to read as follows:

“Section 5.09.100 Classification of Licenses.

* * *

S. Class X Special Use Permit License. Class X licenses authorize an Illinois licensed liquor retailer to transfer a portion of its alcoholic liquor inventory from its retail licensed premises to the premises specifically designated for such license to sell or serve alcoholic beverages, but not for resale in any form, at picnics, outings, festivals, theater nights, or other such similar special occasions for consumption on the premises or within the area specifically designated for such license. A Class X special use permit license may be granted for a maximum of 15 days per location in any 12 month period.

1. An applicant for a Class X special use permit license must also obtain a State of Illinois special use permit license, in accordance with Section 5-1(q) of the Liquor Control Act of 1934.
2. The sale and service of alcoholic beverages under a Class X special use permit license may also include sidewalk service of alcoholic beverages for consumption in an outdoor seating area, subject to the conditions set forth in section 5.09.105 of this chapter, provided that the area and terms of such service shall be defined in the license.
3. The hours of service shall be as provided in section 5.09.250 of this chapter and shall be specified in the license, along with the date(s) of the authorized sale of alcoholic liquors under this section.

4. Notwithstanding any limitations set forth in this subsection, any Class X special use license issued to an authorized vendor for the Winnetka’s Farmers’ Market shall authorize the vendor to sell or serve alcoholic liquor at the Winnetka Farmers’ Market when the Market is operational for the entire season, and the vendor shall not be required to obtain a separate Class X license for each day of the Market.

* * *

SECTION 3: SEVERABILITY. If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to

Additions are bold and double-underlined; deletions are struck through.

achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 4: EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

PASSED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2023.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the President and Board of Trustees of the Village of Winnetka, Illinois, this ____ day of _____, 2023.

Introduced: March 7, 2023

Passed and Approved: _____, 2023

Additions are bold and double-underlined; ~~deletions are struck through.~~

March 7, 2023

MC-04-2023



Agenda Item Executive Summary

TITLE: Resolution No. R-33-2023: Waiving Bidding and Approving Change Order No. 1 to the Contract with Brock Industrial Services, LLC for Asbestos Abatement in Boiler #8 (Adoption)

PRESENTER: Brian Keys

AGENDA DATE: March 7, 2023

CONSENT: No

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

None.

EXECUTIVE SUMMARY:

In August 2022, Boiler #8 at the Electric Plant experienced the failure of boiler tubes. In order to access the area for repairs, an exterior section of the boiler's casing was removed which also required asbestos abatement. Three firms provided proposals for the required work. Under the procurement authority of the Village Manager, a contract was awarded to Brock Industrial Services in the amount of \$19,995. The contractor performed the removal of the boiler casing and insulation as planned which permitted the mechanical contractor to complete the boiler tube repairs (reference Resolution No. R-13-2023). In February 2023, it was determined that additional tube repairs in the top section of the boiler have been identified which requires the removal of additional boiler casing and insulation. Similar to the prior work scope, this will involve asbestos abatement.

Staff requested proposals from Brock Industrial Services and M&O Environmental Company. Both contractors provided proposals for the required work, which includes scaffolding, asbestos abatement, re-insulating the boiler section, and re-installing the casing.

- Brock Industrial Services: \$43,705.50
- M&O Environmental Company: \$53,400

The proposal submitted by Brock Industrial Services included the following:

- \$18,950.00 Exterior casing removal, asbestos removal
- \$17,250.00 Re-insulating and re-installing casing
- \$6,250.00 Scaffolding installation and removal
- \$1,255.50 Permitting Cost

Based on their proposal and satisfactory performance on the first phase of the work, staff is recommending approval of a change order with Brock Industrial Services, LLC. With the change order, the contracted amount for the asbestos abatement, re-insulation and exterior casing work scope for Boiler #8 repairs is \$63,700.50. Until the exterior casing and insulation which contains asbestos is removed, the mechanical contractor cannot complete the additional repairs to the boiler.

The repair of Boiler #8 is not a specific project listed in the 2023 Electric Fund Budget. The budget (account #500.41.28-567) contains funding in the amount of \$338,250 for operating and maintenance expenses associated with the boilers and turbines. In order to offset a portion of the unplanned repair cost, staff is proposing the deferral of two projects (#8 boiler feed pump and #4 non-return valve) until 2024 which offsets \$29,800 of the boiler repair expense. The remaining items in the Boiler & Turbine - O&M account are miscellaneous smaller non-project related expenses (i.e. safety valve testing, permit renewals, consumables) that are not deferrable. With the approval of the change orders (Resolution No. R-33-2023 & Resolution No. R-34-2023) associated with the boiler repair, the year-to-date expenditure for this account is \$289,608 which includes materials and supplies ordered in 2022, that will not arrive until later in 2023. If all of the miscellaneous items fully utilize the corresponding budgeted amounts and assuming no additional unplanned repairs, this account is projected to be over expended by \$81,790. Staff will provide the Village Council with periodic status reports on the expenditures related to this account as the fiscal year progresses.

RECOMMENDATION:

Consider adoption of Resolution No. R-33-2023, Waiving Bidding and Approving Change Order No. 1 to the Contract with Brock Industrial Services, LLC for Asbestos Abatement in Boiler #8.

ATTACHMENTS:

1. Resolution No. R-33-2023: Waiving Bidding and Approving Change Order No. 1 to the Contract with Brock Industrial Services, LLC

RESOLUTION NO. R-33-2023

**A RESOLUTION WAIVING BIDDING AND APPROVING CHANGE ORDER NO. 1 TO
THE CONTRACT WITH BROCK INDUSTRIAL SERVICES, LLC FOR
ASBESTOS ABATEMENT IN BOILER #8**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the Village of Winnetka ("**Village**") to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Village's Department of Water and Electric operates Boiler No. 8 ("**Boiler**"), which is in need of repair; and

WHEREAS, on September 28, 2022, the Village entered into contact with Brock Industrial Services, LLC ("**Contractor**") to perform asbestos abatement ("**Work**") for \$19,995.00 ("**Contract**"); and

WHEREAS, during the repair of the Boiler, it was discovered that additional repair work is needed to the Boiler, which requires additional asbestos abatement ("**Additional Work**"); and

WHEREAS, while the Village did not obtain bids for the Additional Work, it obtained two proposals to perform the Additional Work; and

WHEREAS, the Contractor was the lowest proposer to perform the Additional Work, and proposed to perform the Additional Work for \$43,705.50 pursuant to a change order ("**Change Order No. 1**"); and

WHEREAS, the Village Council has determined that it is in the best interests of the Village and its residents to waive formal bidding and enter into Change Order No. 1 with the Contractor;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Winnetka, Cook County, Illinois, as follows:

SECTION 1: RECITALS. The Village Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2. WAIVER OF COMPETITIVE BIDDING. Pursuant to Section 4.12.010.C of the Village Code, Section IV.3.D of the Village's Purchasing Manual, and the Village's home rule authority, the Village Council waives the requirement of competitive bidding for the Additional Work.

SECTION 3: APPROVAL OF CHANGE ORDER NO. 1. The Village Council approves Change Order No. 1 in a final form approved by the Village Manager.

SECTION 4: AUTHORIZATION TO EXECUTE CHANGE ORDER NO. 1. The Village Council hereby authorizes and directs the Village President and the Village Clerk to

execute and attest, respectively, on behalf of the Village, Change Order No. 1, after receipt by the Village Manager of two executed copies of Change Order No. 1 from Contractor; provided, however, that if the Village Manager does not receive two executed copies of Change Order No. 1 from Contractor within 60 days after the date of adoption of this Resolution, then this authority to execute and seal Change Order No. 1 will, at the option of the Village Council, be null and void.

SECTION 5: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval by the vote of two-thirds of the Trustees.

ADOPTED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Signed

Village President

Countersigned:

Village Clerk



Agenda Item Executive Summary

TITLE: Resolution No. R-34-2023: Approving Change Order No. 1 to a Contract with Independent Mechanical Industries, Inc. for Tube Installation and Boiler Casing Replacement in Boiler #8 (Adoption)

PRESENTER: Brian Keys

AGENDA DATE: March 7, 2023

CONSENT: No

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

January 17, 2023 - Resolution No. R-13-2023, Approving a Contract with Independent Mechanical Industries, Inc. for Tube Installation and Boiler Casing Replacement in Boiler #8

EXECUTIVE SUMMARY:

At the January 17, 2023, Village Council Meeting, the Council adopted Resolution No. R-13-2023, approving a contract with Independent Mechanical Industries in an amount not to exceed \$59,400 for tube installation and boiler casing replacement work in Boiler #8.

On February 16, 2023, Independent Mechanical completed the boiler tube repairs and performed the required pressure test of the boiler. While performing the test, another leak was identified in the top section of the boiler. The exact location of the leak and the extent of repair is presently unknown. In order to determine the required repair, an additional section of the boiler's exterior casing and insulation needs to be removed. This work will be performed by a different contractor and is expected to take 3-4 weeks to complete. Although related to the repair of Boiler #8, this work scope will be presented to the Village Council for a separate contract consideration (Reference Resolution No. R-33-2023).

At this time, Independent Mechanical Industries is unable to provide a repair proposal for the additional boiler tube repairs as the specific location of the leak is not accessible. In order to keep the repair of the boiler progressing and to facilitate the boiler's return to service at the earliest available opportunity, prior to the summer generating season, staff is requesting the Village Council's consideration of a Change Order to the contract with Independent Mechanical Industries in the amount of \$50,000. With the Council's approval of a change order and provided the work can be completed within the authorized funding, this will permit staff to proceed with the tube repairs once the boiler casing and insulation have been removed.

The repair of Boiler #8 is not a specific project listed in the 2023 Electric Fund Budget. The budget (account #500.41.28-567) contains funding in the amount of \$338,250 for operating and maintenance expenses associated with the boilers and turbines. In order to offset a portion of the unplanned repair cost, staff is proposing the deferral of two projects (#8 boiler feed pump and #4 non-return valve) until 2024 which offsets \$29,800 of the boiler repair expense. The remaining items in the Boiler & Turbine -

O&M account are miscellaneous smaller non-project related expenses (i.e. safety valve testing, permit renewals, consumables) that are not deferrable. With the approval of the change orders (Resolution No. R-33-2023 & Resolution No. R-34-2023) associated with the boiler repair, the year-to-date expenditure for this account is \$289,608 which includes materials and supplies ordered in 2022, that will not arrive until later in 2023. If all of the miscellaneous items fully utilize the corresponding budgeted amounts and assuming no additional unplanned repairs, this account is projected to be over expended by \$81,790. Staff will provide the Village Council periodic status reports on the expenditures related to this account as the fiscal year progresses.

RECOMMENDATION:

Consider adoption of Resolution No. R-34-2023, Approving Change Order No. 1 to a Contract with Independent Mechanical Industries, Inc. for Tube Installation and Boiler Casing Replacement in Boiler #8.

ATTACHMENTS:

1. Resolution No. R-34-2023: Approving Change Order No 1 To Contract With Independent Mechanical

RESOLUTION NO. R-34-2023

**A RESOLUTION APPROVING CHANGE ORDER NO. 1 TO THE CONTRACT WITH
INDEPENDENT MECHANICAL INDUSTRIES, INC. FOR
TUBE INSTALLATION AND BOILER CASING REPLACEMENT IN BOILER #8**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the Village of Winnetka ("**Village**") to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Village's Department of Water and Electric operates Boiler No. 8 ("**Boiler**"), which is in need of repair ("**Materials and Services**"); and

WHEREAS, on January 17, 2023, the Village Council awarded a contract to the Independent Mechanical Industries, Inc. ("**Contractor**") in an amount not to exceed \$59,400.00 to provide the Materials and Services to repair Boiler No. 8; and

WHEREAS, upon Contractor's performance of the Materials and Services, it was determined that additional repair work on the Boiler is required to repair an additional leak ("**Additional Work**"); and

WHEREAS, Contractor has offered to provide the Additional Work based upon Contractor's time and material rates, which are estimated at \$50,000.00 for the Additional Work pursuant to a change order ("**Change Order No. 1**"); and

WHEREAS, the Village Council has determined that it is in the best interests of the Village and its residents to enter into Change Order No. 1 with the Contractor;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Winnetka, Cook County, Illinois, as follows:

SECTION 1: RECITALS. The Village Council hereby adopts the foregoing recitals as its findings, as if fully set forth herein.

SECTION 2: APPROVAL OF CHANGE ORDER NO. 1. The Village Council approves Change Order No. 1 in a final form approved by the Village Manager.

SECTION 3: AUTHORIZATION TO EXECUTE CHANGE ORDER NO. 1. The Village Council hereby authorizes and directs the Village President and the Village Clerk to execute and attest, respectively, on behalf of the Village, Change Order No. 1, after receipt by the Village Manager of two executed copies of Change Order No. 1 from Contractor; provided, however, that if the Village Manager does not receive two executed copies of Change Order No. 1 from Contractor within 60 days after the date of adoption of this Resolution, then this authority to execute and seal Change Order No. 1 will, at the option of the Village Council, be null and void.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

March 7, 2023

R-34-2023

ADOPTED this 7th day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

Signed

Village President

Countersigned:

Village Clerk



Agenda Item Executive Summary

TITLE: Ordinance No. MC-02-2023: Amending Chapter 9.12 of the Winnetka Village Code Concerning Firearm Regulations (Introduction)

PRESENTER: Brian O'Connell, Peter Friedman

AGENDA DATE: March 7, 2023

CONSENT: No

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

At its December 13, 2022 Study Session, the Village Council directed the Village Attorney to prepare an ordinance amending certain provisions of the Village Code related to firearms.

EXECUTIVE SUMMARY:

In response to the July 4 mass shooting in Highland Park, the Village Council held a public listening session regarding firearms safety on August 9, 2022. On September 20, 2022, the Village Council adopted Resolution No. R-100-2022, a Resolution calling for federal and state action on gun safety and violence. On December 13, 2022, the Village Council held a Study Session to specifically review the Village's existing firearms regulations as set forth in Section 9.12 of the Village Code and to consider amendments to these regulations. The Council specifically reviewed the Village Attorney's public November 4, 2022 memorandum and the amendment recommendations made in that memo. Following a full and detailed discussion of the existing regulations and the state of constitutional restrictions and litigation related to firearms, the Council directed the Village Attorney to prepare an ordinance amending the existing firearms regulations as recommended in the November 4 memorandum. Accordingly, the Village Attorney has prepared Ordinance No. MC-02-2023, which provides amendments to the provisions in Section 9.12 relating to (i) safe storage and transportation of firearms, (ii) handgun and ammunition surrender, (iii) and penalties for violating the code provisions on firearms.

RECOMMENDATION:

Consider adopting Ordinance No. MC-02-2023, Amending Chapter 9.12 of the Winnetka Village Code Concerning Firearm Regulations.

ATTACHMENTS:

1. Ordinance No. MC-02-2023: Amending Chapter 9.12 of the Village Code Concerning Firearms Regulations
2. Firearms Regulations Memorandum from Village Attorney

**AN ORDINANCE AMENDING CHAPTER 9.12 OF THE
WINNETKA VILLAGE CODE CONCERNING FIREARM REGULATIONS**

WHEREAS, the Village of Winnetka ("***Village***") is a home rule municipal corporation in accordance with Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs; and

WHEREAS, Chapter 9.12 of the Winnetka Village Code, as amended ("***Village Code***"), regulates firearms in the Village ("***Firearm Regulations***"); and

WHEREAS, the Village Council has reviewed the existing Firearms Regulations in light of the July 4, 2022 mass shooting in Highland Park and other similar tragedies around the County as well as existing Illinois statutes and recent court decisions from the United States Supreme Court and other federal and state courts relating to the nature and extent of Illinois local government authority over firearms; and

WHEREAS, the Village Council has determined that it will serve and be in the best interests of the Village to amend the existing Firearm Regulations as set forth in this Ordinance;

NOW, THEREFORE, the Council of the Village of Winnetka does ordain as follows:

SECTION 1: RECITALS. The recitals are incorporated into this Section as the findings of the Village Council, as if fully set forth in this Section.

SECTION 2: SAFE STORAGE AND TRANSPORTATION. Section 9.12.025, titled "Safe Storage and Transportation of Assault Weapons," of Chapter 9.12, titled "Weapons," of Title 9, titled "Public Peace, Morals and Welfare," of the Village Code shall be amended to read as follows:

"Section 9.12.025 Safe Storage and Transportation of Assault Weapons.

- A. Safe Storage of Assault Weapons. It is unlawful and a violation of this subsection A to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. ~~For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

B. Transportation of Assault Weapons. It is unlawful and a violation of this subsection B for any person to carry or possess an assault weapon in the Village, except when on his own land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet ~~one of~~ the following conditions:

1. Are broken down in a non-functioning state; ~~or~~ and
2. Are not immediately accessible; ~~or~~ and
3. Are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.

C. Exceptions.

1. Self-defense. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.
2. The provisions of this section do not apply (i) to any law enforcement officer, agent or employee of any municipality of the State of Illinois, (ii) to any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state, or (iii) to any member of the military or other service of any state or the United States, including national guard and reserves; provided, that the persons described are authorized by a competent authority to so carry an assault weapon ~~loaded on a public way~~ and such person is acting within the scope of his duties or training."

SECTION 3: HANDGUN AND AMMUNITION SURRENDER. Section 9.12.030, titled "Surrender of Handguns and Ammunition," of Chapter 9.12, titled "Weapons," of Title 9, titled "Public Peace, Morals and Welfare," of the Village Code Shall be amended to read as follows:

"Section 9.12.030 Surrender of handguns and ammunition.

- A. Voluntary Surrender. ~~Subject to the provisions of the following subsection (B), any~~ Any person within the Village may voluntarily and peaceably deliver and abandon to the Chief of Police any handgun or ammunition. ~~Except as provided in the following subsection (B), no~~ No person shall be asked for identification nor will such person be subject to prosecution for the possession of any handgun or ammunition voluntarily surrendered.
- B. Conditions. The voluntary surrender of any handgun or ammunition ~~shall be subject to the following conditions:~~ shall not moot or in any manner invalidate any pending or future investigation, arrest, charge, or prosecution for a violation of any provision of this Chapter 9.12 or any other law or regulation concerning the use or possession of firearms or ammunition.

- a. ~~The voluntary delivery or abandonment of any handgun or ammunition after an arrest or charge for violation of any provision of this section shall not moot or in any manner invalidate such arrest or charge.~~
 - b. ~~The voluntary delivery or abandonment of any handgun or ammunition shall not moot or in any manner invalidate the investigation, arrest, charge or prosecution for any offenses other than possession.~~
- C. Destruction of Surrendered Handguns **and Ammunition**. Whenever any handgun or ammunition is surrendered pursuant to the terms of this section, the Chief of Police shall ascertain whether such handgun or ammunition is needed as evidence in any matter. If such handgun or ammunition is not required for evidence it shall be destroyed at the direction of the Chief of Police. A record of the date and method of destruction and an inventory of the handgun or ammunition so destroyed shall be maintained.”

SECTION 4: PENALTIES. Section 9.12.050, titled “Penalties,” of Chapter 9.12, titled “Weapons,” of Title 9, titled “Public Peace, Morals and Welfare,” of the Village Code shall be amended to read as follows:

“Section 9.12.050 Penalties

- A. Any person found in violation of Section 9.12.010 of this chapter shall be subject to a fine of not less than ~~one hundred fifty dollars (\$150.00)~~ **three hundred dollars (\$300.00)** nor more than ~~one thousand dollars (\$1,000.00)~~ **two thousand dollars (\$2,000.00)**.
- B. Any person found in violation of Section 9.12.025 or Section 9.12.040 of this chapter shall be subject to a fine of not less than ~~five hundred dollars (\$500.00)~~ **one thousand dollars (\$1,000.00)** nor more than ~~one thousand dollars (\$1,000.00)~~ **two thousand dollars (\$2,000.00)** for each offense.”

SECTION 6: SEVERABILITY. If any provision of this Ordinance or any part of this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 7: EFFECTIVE DATE. This Ordinance will be in full force and effect upon its passage and approval in the manner provided by law.

PASSED this 7 day of March, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2023.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the
President and Board of Trustees
of the Village of Winnetka,
Illinois, this ____ day of
_____,
2023.

Introduced: March 7, 2023

Passed and Approved: _____, 2023

March 7, 2023

MC-02-2023

Peter M. Friedman
312.528.5192
peter.friedman@elrodfriedman.com

Memorandum

Date: November 4, 2022

To: Robert Bahan, Village Manager

From: Peter M. Friedman
Hart M. Passman

Re: Village Firearms Regulations

At your request, we have analyzed the Village's existing firearms regulations, as set forth in Chapter 9.12 of the Village Code, to identify any necessary or advisable amendments. We have reviewed the existing ordinances in light of recent court decisions affecting other Illinois local governments, including: *Wilson v. Cook County*, 2012 IL 112026 (2012), in which the Illinois Supreme Court held that the Cook County assault weapons ban was not impermissibly vague and did not violate the Equal Protection Clause of the United States Constitution; *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), *cert. denied*, 577 U.S. 1039 (2015), in which the United States Circuit Court for the Seventh Circuit held that the Highland Park assault weapons ban did not violate the Second Amendment to the U.S. Constitution; and *Easterday v. Village of Deerfield*, 2020 IL App (2d) 190879, in which the Illinois Appellate Court upheld Deerfield's 2018 ordinance amendments by which that Village converted a safe storage law into a full assault weapons ban.

In Sections 1 through 6 of this Memorandum, we identify key firearms regulations and components of the existing Village regulations, and discuss whether, and to what extent, we recommend amendments based on the current state of constitutional and Illinois preemption law. In Section 7, we review whether and how the Village might consider implementation of a full ban on assault weapons. In Section 8, we identify the opportunity to increase fines for violations of firearms regulations.

1. Regulation of Handguns.

There is a distinct difference between the Village's authority to regulate handguns and the Village's authority to regulate assault weapons. Recall that the Village Council adopted a prohibition on handguns in the aftermath of the 1988 shooting at the Hubbard Woods Elementary School. The Village Council repealed this ban following the U.S. Supreme Court's 2008 decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Court recognized for the first time a right under the Second Amendment to possess handguns in the home for self-defense. Additionally, in Illinois, Section 13.1(b) of the Illinois Firearm Owners Identification Card Act ("**FOID Act**") specifically pre-empts home rule authority with respect to "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun."

Accordingly, we do not recommend that the Village adopt new code provisions regarding the regulation, possession, or registration of handguns or of the ammunition for handguns, as these types of code provisions will be subject to challenge as violations of the Second Amendment and outside the Village's home rule powers. The Village should also be careful not to enforce any of its existing or future firearms regulations in a manner that impermissibly affects handguns.

2. Parental Responsibility.

Section 24-9 of the Illinois Criminal Code generally prohibits access to firearms to minors 14 years or younger if the minor causes death or great bodily harm with the firearm, except if the firearm was secured or used by the minor for self-defense or obtained through illegal means. The City of Chicago has a far broader provision. Under Section 8-20-050 of the Chicago City Code ("Firearms – Protection of Minors"), parental/adult liability attaches to anybody under the age 18 (rather than 14) and is not limited to just when the minor "causes death or great bodily harm," but rather applies if "the person knows or had reason to believe that a minor under the age of 18 years is likely to gain access to the firearm or ammunition." We are concerned that Chicago's provision, to the extent that it applies to handguns (that is, a regulation on how one can legally or illegally possess a handgun) runs afoul of the FOIA Act handgun preemption.

Section 8-20-050 was adopted in 2010, three years before the FOIA Act preemption took effect. It is possible that this provision is not being enforced in light of the FOIA Act preemption even though it has not been officially repealed. We are in discussions on this issue with the Chicago Corporation Counsel's office to determine the City's legal position on Section 8-20-050 and whether there is a legal justification to support inclusion of a similar provision in the Winnetka Village Code. We will be able to provide a more definitive answer on this distinct issue at or prior to the Study Session discussion on November 10.

3. Definition of Assault Weapons.

Section 9.12.20.C of the Village Code sets forth a long definition of the term "assault weapon." In Sections 9.12.20.C.1 through C.6, the Code sets forth general descriptions of the features of firearms that, if present, render the weapon an "assault weapon." Section 9.12.20.C.7 then names over 60 specific types of firearms that are expressly identified as "assault weapons."

As you know, the 2013 amendments to the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/0.01 *et seq.*, greatly restricted local authority to regulate assault weapons. Under those amendments, no municipality may regulate assault weapons unless it enacted local assault weapons regulations on or before the date that was 10 days after the statutory amendments became law.¹ 430 ILCS 65/13.1(c). If a municipality enacted its regulations by the end of that 10-Day Window, then it may maintain, and even amend, assault weapons regulations. *Id.* The statute explains that a proper local regulation of assault weapons must "designate...either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of 'assault weapon' under the ordinance." *Id.*

Winnetka's current definition of assault weapons appears to be the same as the then-existing definition of "assault weapons" in Cook County ordinance that survived scrutiny in the

¹ This provision is often referred to as the "10-Day Window". Governor Quinn issued an amendatory veto of the bill that proposed the amendments on July 2, 1993. The General Assembly overrode the veto on July 9, 2013. Accordingly, the "10-Day Window" closed on July 19, 2013. Winnetka adopted its current assault weapons regulations on that last day of the 10-Day Window.

Wilson litigation.² That same definition was adopted by the City of Highland Park, and upheld in the *Friedman* case. Because the Village's definition matches the definitions that have been upheld against vagueness, equal protection, and Second Amendment challenges, we do **not** recommend that the Village amend its definition at this time. Unless the Village expands its law to include a partial or full ban on assault weapons (see Section 6 of this Memorandum), the definition thus makes these weapons subject to the safe storage and transportation regulations (see Section 4), but not more.

4. Definition of Large Capacity Magazine for Assault Weapons Only.

Following the 2013 statutory amendments, many communities that adopted assault weapons regulations included provisions governing "large capacity magazines." Generally, a large capacity magazine is one that can hold more than 10 rounds of ammunition at a time. The Village is among the municipalities that defines "large capacity magazine" in this fashion (with three exceptions that are also common across these types of ordinances). The Village's ordinance only uses the term "large capacity magazine" in one substantive manner: one of the definitions of "assault weapon" is "a semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise..." See Sec. 9.12.020.C.1.

In *Easterday v. Village of Deerfield*, while the Appellate Court upheld nearly all of Deerfield's assault weapons ban, the Court ruled against the Village with respect to its large capacity magazine provisions. The Court noted that while the 2013 statutory amendments contemplated some local assault weapons regulations, they completely banned local regulation of ammunition for handguns. See 2020 IL App (2d) 190879, ¶ 69. Thus, the Court ruled that "to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act." *Id.* at 2020 IL App (2d) 190879, ¶ 71.

Accordingly, to avoid any confusion and to minimize the risk of a challenge, we recommend amendment of the definition of "large capacity magazine" so that it applies only to assault weapons.

5. Safe Storage and Transportation Regulations for Assault Weapons Only.

When the Village adopted its 2013 ordinance, it elected not to pursue a full ban on assault weapons, as Highland Park did. Rather, Winnetka adopted a "safe storage" law, set forth in Section 9.12.025 of the Village Code. The Village's ordinance has two components: a requirement that assault weapons are safely stored in the Village, and regulations on transportation of assault weapons. Each of these is discussed in turn below.

a. Safe Storage.

Section 9.12.025.A provides that it is unlawful "to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user." The Code further explains

² Cook County has since amended its definition further to add several more categories of assault weapons. Highland Park has not followed suit. We are not aware of any legal challenge to the amended County definition.

that “[f]or purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.”

We are not aware of any legal challenge to a safe storage law; to date, the gun rights lobby has focused its efforts on more drastic local regulations like full bans. We do believe that *some* type of safe storage law is legal (for municipalities that acted by the end of the 10-Day Window), given the Appellate Court’s decision in the *Easterday v. Village of Deerfield* case, in which the Court rejected the plaintiffs’ claims that the 2013 statutory amendments prohibited all local assault weapons regulations of any kind. See 2020 IL App (2d) 190879, ¶¶ 39-42. But we cannot be certain as to whether the Village’s current ordinance would survive such a challenge.

With that in mind, we find that the safe storage provisions in Section 9.12.025.A are not as clear as they could be. Specifically, the second sentence of Sec. 9.12.025.A – which states that a weapon is not being “stored or kept” if “under the control” of the owner or an “authorized user” – is vague and unnecessarily repetitive. Sec. 9.12.025.B provides rules on how an assault weapon must be handled when it is not being “stored or kept” -- that is, when it is being carried or otherwise possessed. This Subsection B provides that it is generally unlawful to carry or possess an assault weapon except when the owner of the gun is on the owner’s own land or in the owner’s own home, or as a permitted invitee to another property or another home. Subsection B further provides that these carry-and-possess regulations do not apply if the gun is inoperable, not immediately accessible, or unloaded and enclosed in a case by a proper FOID card holder. Given these provisions, we believe that the second sentence of Subsection A may be deleted.

b. Transportation.

Sec. 9.12.025.B of the Village Code generally outlaws the carrying or possession of assault weapons. That provision contains three exceptions: (1) on the owner’s own land, dwelling, or place of business; (2) on someone else’s land or dwelling, with the owner’s permission; and (3) in transportation, but only if the weapon satisfies one of three conditions:

- The weapon is “broken down in a non-functioning state; or”
- The weapon is “not immediately accessible; or”
- The weapon is “unloaded and enclosed” in a case or box by someone with a FOID card.

As with safe storage laws, we are not aware of a legal challenge to transportation laws, and we believe the general authority upheld in *Easterday* validates the Village’s general authority to enforce its own transportation law. However, we are troubled by the disjunctive connection between the three conditions for permissible transportation. In contrast, Highland Park’s transportation regulation is *conjunctive*: a weapon cannot be transported unless it is “broken down *and* in a nonfunctioning state *and* ... not immediately accessible.” Highland Park City Code, Sec. 136.006(C) (emphasis added). We do not believe that the Village’s transportation regulation is legally problematic; rather, we believe it is substantively insufficient. We recommend amending this provision to make the three conditions conjunctive, such that all three must be met for the exception to apply. Simply, the two instances of “or” should be revised to “and.”

c. Police and Military Exception.

Section 9.12.025.C.2 of the Village Code contains a general exception from both the safe storage and transportation regulations for law enforcement officers and members of the military. The exception is limited to only those who “are authorized by a competent authority to so carry an assault weapon loaded on a public way” and who are “acting within the scope of his duties or training.”

As written, it is not clear if the police and military exception only applies when those personnel are “on a public way” or if it applies anywhere in the Village, if the personnel’s authorization includes carrying on a public way. We recommend that this provision be amended to eliminate the “public way” reference. We note that the Village of Deerfield’s ordinance contains similar language as Winnetka’s, but that Highland Park’s ordinance does not have the “public way” reference.

6. Other Existing Provisions.

We have identified the following additional concerns about other existing provisions of Chapter 9.12:

a. Surrender of Handguns and Ammunition.

Section 9.12.030 sets forth a process for the “voluntary” and “peaceable” surrender of handguns and ammunition to the Village Chief of Police. The Section contains two conditions in Sec. 9.12.030.B, each of which provides that the surrender does not “moot or in any manner invalidate” arrests or prosecutions for certain firearm-related actions. Some of the text of Sec. 9.12.030.B is vague, and we recommend clarifying amendments as part of any approved set of changes to Chapter 9.12. Specifically, we would re-write 9.12.030 as follows (with additions in bold and double-underlined text, and deletions struck through):

“Section 9.12.030 Surrender of handguns and ammunition.

A. Voluntary Surrender. ~~Subject to the provisions of the following subsection (B), any Any person within the Village may voluntarily and peaceably deliver and abandon to the Chief of Police any handgun or ammunition. Except as provided in the following subsection (B), no No person shall be asked for identification nor will such person be subject to prosecution for the possession of any handgun or ammunition voluntarily surrendered.~~

B. Conditions. The voluntary surrender of any handgun or ammunition shall be subject to the following conditions: **shall not moot or in any manner invalidate any pending or future investigation, arrest, charge, or prosecution for a violation of any provision of this Chapter 9.12 or any other law or regulation concerning the use or possession of firearms.**

1. ~~The voluntary delivery or abandonment of any handgun or ammunition after an arrest or charge for violation of any provision of this section shall not moot or in any manner invalidate such arrest or charge.~~

2. ~~The voluntary delivery or abandonment of any handgun or ammunition shall not moot or in any manner invalidate the investigation, arrest, charge or prosecution for any offenses other than possession.~~

C. Destruction of Surrendered Handguns. Whenever any handgun or ammunition is surrendered pursuant to the terms of this section, the Chief of Police shall ascertain whether such handgun or ammunition is needed as evidence in any matter. If such handgun or ammunition is not required for evidence it shall be destroyed at the direction of the Chief of Police. A record of the date and method of destruction and an inventory of the handgun or ammunition so destroyed shall be maintained.”

b. Firearms Dealers.

Section 9.12.040 imposes a blanket prohibition on firearms dealer **businesses** in the Village. This ordinance applies with equal force to handgun and assault weapons dealers. It appears that this provision dates back at least to 2008.

We have the following observations regarding this provision. Section 9.12.040 is, functionally, a zoning regulation – it prohibits a particular land use. As a best practice, zoning regulations belong in zoning codes. Further, because of the public hearing requirement in Illinois for zoning code amendments, zoning code provisions enjoy a somewhat-greater presumption of validity.

That said, the United States District Court for the Northern District of Illinois has, in the past, ruled that complete bans on firearm **sales** do not pass Second Amendment muster. In *Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928 (N.D. Ill. 2014), the Court held that Chicago’s “blanket ban” on the sale of weapons impermissibly burdened citizens’ Second Amendment rights. Winnetka’s provision is not the same: it does not ban all sales, but merely bans the *business* of being a gun salesman. We are not aware of a reported decision analyzing how the Second Amendment analysis should or should not distinguish between a ban on gun sales versus a ban on gun businesses. As a result, the Village’s total prohibition on this business could be challengeable.

As you may know, earlier this year, the City of Naperville adopted an ordinance banning the sale of assault weapons throughout its jurisdiction. That ordinance is now being reviewed in the federal court. Although we have concerns about the Village’s current firearm dealer ban, we recommend waiting at this time to observe the outcome of the Naperville litigation. We also do not believe that an amendment now (to move the provision into the zoning code or otherwise remove or amend it) is in the Village’s best interests, as it will call unwanted attention to an ordinance that has not captured the attention of those that might want to challenge local firearms regulations. We can re-evaluate this recommendation after the Naperville case and other pending assault weapons cases are fully adjudicated.

7. Implementation of an Assault Weapons Ban.

If the Village desires to implement a partial or complete assault weapons ban, as Highland Park and Deerfield have done, it can do so either through amending its own Code to expressly prohibit these weapons, or it can coordinate with Cook County for local enforcement of the County’s ban. Each of these is described below.

a. Amendment to the Village Code.

Deerfield, like Winnetka, adopted a safe storage law in 2013 – but then converted its ordinance to a full assault weapons ban in 2018. That amendment was reviewed and upheld by the courts in the *Easterday* decision described above. If the Village would like to implement a ban,

it can do so by simply adopting language similar to Highland Park's and Deerfield's ordinances. The *Easterday* decision secures the rights of Illinois municipalities that acted before the expiration of the 10-Day Window to later tighten their laws to include a ban.

It is possible that adoption of a ban will lead to litigation. At this time, an organization called the National Association for Gun Rights (NAGR) has initiated at least four lawsuits earlier this year against the States of Connecticut, Hawaii, Massachusetts, and against the City of Highland Park, challenging those jurisdictions' assault weapons bans.³ NAGR bases its lawsuits on the U.S. Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), in which the Court invalidated the New York State concealed carry law. The *Bruen* decision sets forth a new framework for review of local firearms regulations that is considerably tougher than the analysis employed to uphold assault weapons bans in *Friedman* and other prior cases. Many scholars and attorneys have surmised that a court applying *Bruen* would find an assault weapons ban to be unconstitutional.

We do not think there would be much value to NAGR or a similar organization to suing Winnetka, given that the same court that would review the Village's ban is the same one that is reviewing Highland Park's – and so we think there is no ground to be gained by suing Winnetka that cannot be covered in the pending litigation. Nevertheless, there is an obvious possibility that the Village would be sued if it adopts a ban.

b. Enforcement of Cook County Ban.

Alternatively, the Village could seek to prohibit assault weapons through the County's ordinance – either through direct enforcement by the County, or through an arrangement by which the County authorizes the Village to enforce the County ordinance on its behalf. Either of these options would require an intergovernmental agreement with the County. In prior conversations that we have had concerning other Cook County municipalities, the County has indicated that it is open to either of these options.

There is one potential legal infirmity to this approach. Despite the County's apparent willingness to cooperate, its ordinance may not be applicable in the Village, precisely because the Village has its own regulation. Section 54-92 of the County ordinance states that the County's law is not applicable to the extent that it conflicts with a home rule municipality's own ordinance. It is not clear whether that provision applies only to firearms dealers' regulations, or to the entire County ordinance – which would include assault weapons. If the Village desires to pursue this option, we will need to contact the appropriate County officials to make sure that the County and Village ordinances contain the correct language to ensure the desired cooperation.

8. Fines.

Fines for violations of the Winnetka firearms code provisions are generally set at a maximum of \$750 per violation. However, Illinois courts have determined that home rule municipalities are not limited to a maximum of \$750. The Village may, therefore, consider whether to increase the fine amounts for violations of Village's firearms regulations, as set forth in Chapter 9.12 of the Village Code.

³ NAGR is also the entity behind the pending challenge to Naperville's prohibition on the sale of assault weapons.



Agenda Item Executive Summary

TITLE: Ordinance No. MC-05-2023: Village Code Update - Lakefront Regulations (Introduction)

PRESENTER: Peter Friedman

AGENDA DATE: March 7, 2023

CONSENT: No

ITEM TYPE: Ordinances and Resolutions

ITEM HISTORY:

At its January 10 and 31, 2023 Study Sessions, the Village Council directed the Village Attorney and staff to prepare an ordinance amending certain provisions of the Village Code related to lakefront regulations. In providing this direction, the Council recognized that it was important to prepare amendments now to establish more clearly the nature and extent of the Village's permit requirements for construction of structures in and adjacent to Lake Michigan. At the same time, it was recognized that this first set of amendments was intended to be narrow and in place for a relatively short period of time while the Village undertakes a more comprehensive study and analysis of possible additional lakefront and steep slope regulations that the Village may want to adopt.

EXECUTIVE SUMMARY:

The draft Ordinance provides a more detailed permit process for lakefront properties than currently exists in the Village Code.

Generally, under the draft amendments a Village permit would be required for any construction in or adjacent to Lake Michigan that also requires a permit from IDNR, IEPA, MWRD, or the Army Corps ("Permitting Agencies"). No Village permit could be issued unless all other permits have been received. The application process requires the applicant to provide the Village with the permit applications submitted to the Permitting Agencies and to consult with the Village during the permit process.

Under the amendments, the Village Engineer would have 14 days after the Permitting Agencies have issued their permits to issue or deny the Village permit. Village Engineer permit decisions would be appealable directly to the Village Council .

The specific criteria for the Village Engineer's permit decisions are explicitly provided and deliberately limited and narrow. Under the amendments, the Village Engineer (or on appeal, the Village Council) would be required to issue a permit if the applicant satisfies these seven specific criteria:

- (1) Receipt of all permits from Permitting Agencies
- (2) Height no greater than minimally necessary
- (3) Compliance with all applicable Village codes

- (4) Project scope no more than minimally necessary
- (5) No public safety hazard
- (6) No interference with public safety operations or personnel
- (7) Alteration of existing site lines no greater than minimally necessary

The amendments further provide for Village inspections of permitted lakefront structures both during and after construction. The Village Engineer is also specifically authorized to retain a coastal engineer to provide expert assistance as part of the permit and inspection processes. Applicants will be required to reimburse the Village for the costs incurred by the Village in utilizing a coastal engineer or other third-party consultant.

RECOMMENDATION:

Consider adopting Ordinance MC-05-2023, An Ordinance Amending Various Sections of the Winnetka Village Code Relating To Lakefront Construction.

ATTACHMENTS:

1. Ordinance No. MC-05-2023 - Amending Village Code - Lakefront Regulations

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE WINNETKA
VILLAGE CODE RELATING TO LAKEFRONT CONSTRUCTION**

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970 and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Winnetka Village Code, as amended ("***Village Code***"), contains regulations which, among other things, broadly protect public health, safety and welfare, including specific regulations relating to impermeable surfaces, fences, plants and structures on private or public property or impacting public places ("***Existing Regulations***"); and

WHEREAS, the Village desires to amend and supplement the Existing Regulations to more specifically address structures in and along Lake Michigan and the permit requirements for those structures; and

WHEREAS, the limited amendments to the Existing Regulations enacted by this Ordinance are intended to be in place while the Village undertakes a more thorough study, review, and consideration of more comprehensive lakefront and steep slope regulations; and

WHEREAS, the Village Council has determined that amending and supplementing the Existing Regulations as set forth in this Ordinance is in the best interests of the Village;

NOW, THEREFORE, the Council of the Village of Winnetka does ordain as follows:

SECTION 1: RECITALS. The recitals above are incorporated into this Section as the findings of the Village Council, as if fully set forth in this Section.

SECTION 2: AMENDMENT TO SECTION 1.04.020 OF THE VILLAGE CODE.
Section 1.04.020, titled "Corporate limits--Jurisdiction," of Chapter 1.04, titled "General Provisions," of Title 1, titled "General Provisions," of the Village Code shall be amended to read as follows:

"Section 1.04.020 Corporate limits--Jurisdiction.

The corporate limits of the Village ~~are shall be as provided~~ **illustrated** on the Official Village of Winnetka Zoning Map, which is appended to Title 17 of this Code **and, as provided in the Village Charter, includes the bed and water of Lake Michigan to the width of one-half mile adjoining and contiguous to the Village.** Unless otherwise specifically provided in this Code, the provisions of this Code apply to persons and property located within the Village's corporate limits and to acts performed within those corporate limits."

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Additions are bold and double-underlined; deletions are struck through

SECTION 3: NEW CHAPTER 15.78 OF THE VILLAGE CODE. Title 15, titled “Buildings and Construction,” of the Village Code shall be amended to add a new Chapter 15.78, titled “Lakefront Construction,” to read as follows:

“Chapter 15.78
LAKEFRONT CONSTRUCTION

Sections:

- 15.78.010 Purpose.**
- 15.78.020 Application of Provisions.**
- 15.78.030 Permit Requirement.**
- 15.78.040 Application Requirements.**
- 15.78.050 Permit Issuance.**
- 15.78.060 Decision of Village Engineer.**
- 15.78.070 Appeal to Village Council.**
- 15.78.080 Criteria for Permit Approval.**
- 15.78.090 Inspection.**

Section 15.78.010 Purpose.

The purpose of this Chapter is to create permitting requirements for construction along, adjacent to and within Lake Michigan. Lake Michigan, its coastline and beaches provide a unique natural resource to the Village and to its residents that must be preserved and protected. Some development and construction activity in and around Lake Michigan may be hazardous to people and property and may accelerate the erosion process and alter natural drainage patterns. This Chapter is intended to attempt to preserve those portions of Lake Michigan, its coastline and vegetation within the Village’s boundaries, while protecting the value of properties along the Lake through the establishment of narrow, reasonable permitting regulations. The regulations in this Chapter are further intended to provide that construction in and adjacent to Lake Michigan and its shoreline will not cause environmental or ecological damage to the Lake or surrounding areas of the Village.

Section 15.78.020 Application of Provisions.

A. This Chapter provides regulations and requirements for construction of structures in and adjacent to Lake Michigan and its shoreline. Specifically, this Chapter applies to (i) that portion of Lake Michigan that lies within the Village’s corporate limits as set forth in Section 1.04.020 of this Code, as well as that portion of Lake Michigan three miles beyond the Village

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Additions are bold and double-underlined; deletions are struck through

corporate limits (“Lake Michigan”), and (ii) public and private property adjacent to Lake Michigan (collectively, “Lake Michigan regulated areas”).

B. This Chapter applies cumulatively with the other provisions of this Title and the Village Subdivision regulations and Building Codes. No approvals or permits issued pursuant to those other regulations or Codes authorize any activity that does not also comply with the applicable provisions of this Chapter. If a provision of this Chapter and a provision in this Title or in the Village Subdivision regulations or Building Codes are inconsistent, the provision resulting in the maximum protection and preservation of the Lake Michigan regulated areas shall govern.

C. The Village Engineer, or the Village Engineer’s designee (“Village Engineer”), is the Village official principally responsible for the administration of the requirements of this Chapter. The Village Engineer may utilize other Village officials and third-party consultants such as a coastal engineer to assist in, among other things, the review and analysis of permit applications and inspections required under this Chapter.

Section 15.78.030 Permit Requirement.

- A. A permit pursuant to this Chapter (“Required Permit”) is required for any construction activity within the Lake Michigan regulated areas that requires a permit from any of the following government agencies (“Permitting Agencies”): the United States Army Corps of Engineers, the Illinois Department of Natural Resources, the Metropolitan Water Reclamation District of Greater Chicago, or the Illinois Environmental Protection Agency (collectively, “Covered Construction”). No person shall undertake any Covered Construction without a Required Permit issued by the Village pursuant to this Chapter.
- B. Any person who engages in any Covered Construction without the Required Permit will be subject to additional fees and penalties as may be set from time to time by resolution of the Village Council or as otherwise provided in this Code.

Section 15.78.040 Application Requirements.

The submittal requirement for an application for a Required Permit will be to submit all documents and application materials required by or submitted to the Permitting Agencies for the Covered Construction. An application must be supplemented to include any updates to the corresponding applications to the Permitting Agencies. The applicant with apprise and consult with the Village on the progress of the review of the Covered Construction by the

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Additions are bold and double-underlined; deletions are struck through

Permitting Agencies so the Village can (i) fully understand exactly what type of construction or activity is being proposed by the application, (ii) provide comments and feedback on the application and project throughout the federal and state review process, and (iii) make a decision on the Required Permit within the time period provided under Section 15.78.50 of this Chapter. Applicants must meet with the Village Engineer in advance of filing an application with any of the Permitting Agencies for Covered Construction to allow the Village an opportunity to identify any issues or concerns related to the Covered Construction, including any aspects of the Covered Construction that may not comply with the permit requirements of this Chapter.

Section 15.78.050 Permit Issuance.

The applicant must provide to the Village Engineer a copy of all permits for the Covered Construction received from the Permitting Agencies. The Village Engineer will make its final permit decision within 14 days after all of the permits from the Permitting Agencies for the Covered Construction have been provided to the Village, unless the applicant and the Village agree to additional time. The applicant will notify the Village Engineer within 48 hours if any of the Permitting Agencies deny a permit for the Covered Construction.

Section 15.78.060 Decision of Village Engineer.

The Village Engineer will take one of the following actions on each permit application within the 14-day period provided in Section 15.78.050 of this Chapter. The Village Engineer may (i) grant the permit, (ii) grant the permit with conditions, or (i) deny the permit. The issuance of any Required Permit will be conditioned on the applicant reimbursing the Village for any cost incurred by the Village in utilizing a coastal engineer or other third-party consultant to review the proposed Covered Construction and to participate in any subsequent inspections as provided in Section 15.78.090 of this Chapter. The applicant may appeal a decision of the Village Engineer directly to the Village Council by filing a written appeal with the Village Clerk within 14 days after receipt of the Village Engineer's decision on the Required Permit.

Section 15.78.070 Appeal to Village Council.

The Village Council will hear and decide an appeal within 60 days after receipt of the appeal, unless the applicant and the Village agree to additional time. The Village will provide notice of the date on which the Village Council will first consider an appeal by (i) notice on the Village website, (ii) posting notice on the Covered Construction property, and (iii) mailing notice to properties within 500 feet from the Covered Construction property. The Village will provide an opportunity for the applicant and other interested

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parties to be heard on the appeal at a public meeting. The decision of the Village Council will be a final decision by resolution duly adopted.

Section 15.78.080 Criteria for Permit Approval.

The Village Engineer (and, if applicable on appeal, the Village Council) will issue a permit (with or without conditions) only if the following requirements are satisfied:

- A. Permitting Agency Permits. The applicant has received and provided to the Village all required permits for the Covered Construction from the Permitting Agencies.
- B. Height. The height of the Covered Construction and any related structures will be no greater than what is minimally necessary to achieve the intended purpose of the project.
- C. Conformity with Code. The Covered Construction and any related structures comply with all other applicable provisions of the Village Code, including, without limitation, the construction permitting requirements of Chapter 15.32 of this Title.
- D. Project Scope. The Covered Construction and any related structures include only what is minimally necessary to achieve the intended purpose of the project.
- E. No Public Safety Hazard. The Covered Construction and any related structures will not create any public safety hazards, including, without limitation, by unreasonably obstructing or otherwise interfering with ingress or egress to adjacent public beaches or private property.
- F. Interference with Public Safety Operations. The Covered Construction and any related structures will not block or otherwise unreasonably interfere with the ability of public safety personnel to conduct search and rescue or other public safety operations.
- G. Existing Site Lines: The Covered Construction and any related structures will alter existing site lines along the Lake Michigan shoreline no more than is minimally necessary to achieve the intended purpose of the project.

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Section 15.78.090 Inspection.

- A. **Construction Inspections. All Covered Construction will be subject to inspection by the Village Engineer periodically during the course of the work. The purpose of these inspections will be to confirm that the Covered Construction complies with the Required Permit and this Code. The Village Engineer may require that the Covered Construction, or any part of the Construction, be inspected at one or more specific points during the project before further work can proceed.**
- B. **Final Inspection. Upon completion of the Covered Construction, the Village Engineer will make a final inspection to confirm that the Covered Construction complies with the Required Permit and this Code. The applicant must submit as-built plans for the project to the Village Engineer prior to the final inspection.**

SECTION 4: AMENDMENT TO SECTION 15.32.050 OF THE VILLAGE CODE.

Section 15.32.050, titled “Applications for Permit,” of Chapter 15.32, titled “Construction Permits,” of Title 15, titled “Buildings and Construction,” of the Village Code shall be amended to read as follows:

“Section 15.32.050 Applications for permit

* * *

M. Permits for Lakefront Construction. All applications for a permit for construction activities within Lake Michigan regulated areas, as defined in Section 15.78.020 of this Code, must also satisfy the requirements of Chapter 15.78 of this Title.

SECTION 5: AMENDMENT TO SECTION 9.16.020 OF THE VILLAGE CODE.

Section 9.16.020, titled “Public Nuisances Defined,” of Chapter 9.16, titled “Nuisances,” of Title 9, titled “Public Peace, Morals and Welfare,” of the Village Code shall be amended to read as follows:

“Section 9.16.020 Public nuisances defined.

* * *

- D. Public Nuisances Affecting Peace and Safety. The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of subsection A of this section:

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* * *

22. Any construction activity and related structures that do not comply with the provisions of Chapter 15.78 of this Code.

* * *

SECTION 6: AMENDMENT TO SECTION 12.04.100 OF THE VILLAGE CODE.

Section 12.04.100, titled “Improvements--Permit,” of Chapter 12.04, titled “Streets and Sidewalks Generally,” of Title 12, titled “Streets, Sidewalks and Public Places,” of the Village Code shall be amended to read as follows:

“Section 12.04.100 Improvements--Permit.

No sewer, water pipe, oil pipe, conduit pipe, gas pipe, wire or cable for conveying electric current, nor any street or alley, pavement, sidewalk or other like improvement shall be placed, laid or maintained in, under or upon any proposed or existing public street, alley or other public place in the Village or in any proposed addition, subdivision or dedication of any lands within the boundaries of the Village, **including the portion of Lake Michigan within the boundaries of the Village,** except improvements constructed under special assessment proceedings, unless a permit authorizing the same shall have been duly issued by the Director of Engineering.”

SECTION 7: AMENDMENT TO SECTION 12.04.140 OF THE VILLAGE CODE.

Section 12.04.140, titled “Rules and Regulations,” of Chapter 12.04, titled “Streets and Sidewalks Generally,” of Title 12, titled “Streets, Sidewalks and Public Places,” of the Village Code shall be amended to read as follows:

“Section 12.04.140 Rules and regulations.

The Director of Public Works shall be authorized to promulgate such standards, rules and regulations for any work in, on or above any public street, sidewalk or dedicated right-of-way, **or in or adjacent to Lake Michigan,** as he or she may determine to be necessary and appropriate to implement the provisions of this Code and to provide for the public safety. Any person doing any work in, on or above any public street, sidewalk or dedicated right-of-way, **or in or adjacent to Lake Michigan,** shall be responsible for bearing all costs of complying with the provisions of any standards, rules or regulations promulgated pursuant to this section.”

SECTION 8: SEVERABILITY. If any provision of this Ordinance or part of this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

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SECTION 9: EFFECTIVE DATE. This Ordinance will be in full force and effect upon its passage and approval in the manner provided by law.

PASSED this ____ of _____, 2023, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2023.

Signed:

Village President

Countersigned:

Village Clerk

Published by authority of the
President and Board of Trustees of
the Village of Winnetka, Illinois,
this ____ day of _____,
2023.

Introduced: March 7, 2023

Passed and Approved: _____, 2023

March 7, 2023

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