



VILLAGE OF WILMETTE

1200 Wilmette Ave.
WILMETTE, ILLINOIS 60091-0040

OFFICE OF
THE MANAGER

(847) 251-2700
FAX (847) 853-7700
TDD (847) 853-7634

January 10, 2007

To: Public Safety Committee
Chair: Trustee Joanne Aggens
Trustee Mari Terman
Trustee Lali Watt

From: Mike Earl, Village Manager

Subject: Cost Sharing Formula with Winnetka – CAD System

We have been working with the staff from the Village of Winnetka on a cost sharing formula for the purchase and operation of the CAD system that we believe is fair and responsible to both communities. I am pleased to recommend the following approach.

Cost Sharing Formula - Initial Purchase

Fifty percent of the formula would be a fixed cost shared equally by the communities and takes into account the fact that both communities would pay roughly about the same were we to both purchase our own stand alone CAD system. The 50% variable cost portion takes into account the different populations of the two towns (Wilmette = 27,671, Winnetka = 12,419)

Total Purchase Cost: \$697,550

Fixed Cost Portion (50%): \$174,388 ($\$697,550/2 = \$348,775/2 = \$174,388$)

Variable Cost Portion (50%):

Wilmette -	$\$348,775 \times .69 = \$240,654$
Winnetka -	$\$348,775 \times .31 = \$108,120$

Wilmette Share: $\$174,388 + \$240,654 = \$415,041$

Winnetka Share: $\$174,388 + \$108,120 = \$282,508$

Cost Sharing Formula - Operating Expenses

The first three years expenses would be split based on population (69/31). Beginning in the fourth year actual call data would gradually be phased into the formula such that in year six it will be based entirely on call data.

RESOLUTION NO. 2007-R-10

**A RESOLUTION AUTHORIZING AN
INTERGOVERNMENTAL AGREEMENT WITH THE
VILLAGE OF WINNETKA, ILLINOIS FOR THE PURPOSE OF
A JOINT POLICE COMPUTER AIDED DISPATCH PROJECT**

WHEREAS, the President and Board of Trustees of the Village of Wilmette, Cook County, Illinois, an Illinois home rule municipality (hereinafter the "Village") find that the Village is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and,

WHEREAS, the President and Board of Trustees further find that the Village of Winnetka, Cook County, Illinois, an Illinois home rule municipality (hereinafter "Winnetka") find that Winnetka is a home rule municipal corporation as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and,

WHEREAS, the President and Board of Trustees further find that both the Village and Winnetka are additionally authorized as units of local government to enter into intergovernmental agreements in furtherance of their corporate purposes, pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, and additionally, pursuant to the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*; and,

WHEREAS, the President and Board of Trustees further find that the Village and Winnetka determined that it is in their mutual interest, and the public interest, for the two municipalities to cooperatively purchase and operate a computer-aided police dispatch system, and that the Village and Winnetka have developed an Intergovernmental Agreement (hereinafter the "Agreement") in furtherance of the Villages of Wilmette and Winnetka Joint Computer Aided Dispatch Project (hereinafter the "Project"), a copy of said Agreement being attached hereto as Exhibit A and incorporated by reference as if set forth verbatim herein; and,

WHEREAS, the President and Board of Trustees further find that Article VII of the 1970 Constitution of the State of Illinois, and the Intergovernmental Cooperation Act, (5 ILCS § 220/1, *et seq.*), provide authority for such intergovernmental cooperation between the Village and Winnetka, that both Village and Winnetka have the authority to enter into the Agreement pursuant to such powers, and that the public interest would be served thereby; and,

WHEREAS, the President and Board of Trustees further find that further find and determine that entering into the Agreement for the Project with the Village of Winnetka is for the benefit of the public health, safety, morals and welfare of the Village and is, therefore, a proper exercise of the Village's home rule powers;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Wilmette, Cook County, Illinois:

SECTION 1: The foregoing findings and recitals, and each of them, are hereby adopted as Section 1 of this Resolution and are incorporated by reference as if set forth verbatim herein.

SECTION 2: The President and Board of Trustees hereby authorize and approve the Village's entry into the Agreement with Winnetka, a copy of which is attached hereto as Exhibit A and incorporated by reference as if set forth verbatim herein.

SECTION 3: The Village President and Village Clerk, and each of them, are hereby authorized and directed: (i) to execute and attest, respectively the Agreement, substantially in the form set forth in the attached Exhibit A and subject to the Corporation Counsel's approval as to form; and (ii) to deliver the executed Agreement to the Village of Winnetka; and (iii) to take such other or further administrative steps as may be necessary to give full force and effect to this Resolution and the Agreement authorized herein.

ADOPTED by the President and Board of Trustees of the Village of Wilmette, Illinois, on the 13th day of **March, 2007**.

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Clerk of the Village of Wilmette, Illinois

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE
OF WILMETTE AND THE VILLAGE OF WINNETKA FOR THE JOINT
ACQUISITION, OPERATION AND MAINTENANCE OF COMPUTER
HARDWARE AND SOFTWARE FOR A COMPUTER ASSISTED
DISPATCH SYSTEM**

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF
WILMETTE AND THE VILLAGE OF WINNETKA FOR THE JOINT
ACQUISITION, OPERATION AND MAINTENANCE OF COMPUTER
HARDWARE AND SOFTWARE FOR A COMPUTER ASSISTED
DISPATCH SYSTEM**

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of March, 2007 between the **VILLAGE OF WILMETTE**, an Illinois home rule municipal corporation ("Wilmette"); and the **VILLAGE OF WINNETKA**, an Illinois home rule municipal corporation ("Winnetka"). (Hereinafter, Wilmette and Winnetka may be individually referred to as a "Party" and may be collectively referred to as the "Parties"). In consideration of the mutual promises of the Parties and other good and valuable consideration, the Parties hereby agree as follows:

Section 1. Authority.

(a) The Parties, and each of them, are home rule units of government as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois and, pursuant to said constitutional authority, may exercise any power and perform any function pertaining to their government and affairs for the protection of the public health, safety, morals and welfare.

(b) The Parties, and each of them, are units of local government authorized under the Intergovernmental Cooperation provisions of Article VII, Section 10 of the 1970 Constitution of the State of Illinois to contract or otherwise associate among themselves to obtain or share property, equipment and services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and to use their credit, revenues, and other resources to pay costs related to intergovernmental activities.

(c) The Parties, and each of them, are units of local government authorized under the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*), which further authorizes them to contract or otherwise associate with each other to obtain or share property, equipment and services and to exercise, combine, or transfer any power or function in any manner not prohibited by law.

(d) The corporate authorities of each of the Parties have determined that it is in the public interest that this Agreement be executed and implemented by them, and each of the Parties has approved this Agreement by a Resolution duly adopted by their respective corporate authorities.

Section 2. Purpose.

(a) The Parties intend through this Agreement to jointly purchase, develop, test, use, operate, and maintain certain hardware and software that is necessary and desirable for the operation of their respective police departments, as described in Exhibit A to this Agreement (hereinafter collectively referred to as "System") to replace

certain existing police mobile data equipment, telecommunications and records systems owned by each of the Parties.

(b) The Parties, and each of them, have determined that greater operational efficiencies and cost savings may be achieved by proceeding jointly in the implementation and operation of the Systems than could be achieved if each of the Parties proceeded individually.

(c) The Parties intend through this Agreement to establish a fair and equitable cost sharing arrangement for portions of the System that are appropriate for shared costs, and that costs that inure to the benefit of only one Party shall be borne by the Party receiving such benefit.

Section 3. Description of the System.

(a) On or about February 21, 2006, in furtherance of the purposes set forth in Section 2 hereof, the Parties jointly issued a request for proposals titled, "North Shore CAD Cooperative Request for Proposal for a Computer Aided Dispatch System," which is incorporated by reference in this agreement as if set forth verbatim herein (hereinafter referred to as the "RFP"), to solicit proposals for the hardware, software, design and consulting services necessary to purchase, develop, test, use, operate and maintain the Systems for the benefit of both Parties, including, without limitation, providing training, skills and transition assistance to the Parties for the use of the Systems, subject to the terms and conditions set forth in one or more contracts executed with vendors as approved by the Parties.

(b) After reviewing the responses to the RFP, the Parties have agreed to proceed to develop the Systems based on the proposal submitted by New World Systems, Inc., a Michigan business corporation (hereinafter "Vendor"), dated March 28, 2006, which proposal is incorporated by reference as if set forth verbatim herein (hereinafter the "Proposal"). The Proposal also included a "Total Cost Summary" prepared by Vendor and dated November 3, 2006.

(c) Pursuant to negotiations between the Vendor and the Parties, the Vendor has modified the proposed costs and has prepared and executed a Software License Agreement, a copy of which is attached hereto as Exhibit A and is defined in Section 6(g), below.

(d) The RFP, Proposal and Software License and Services Agreement (hereinafter collectively referred to as the "Contract" or the "Contract Documents") constitute the description of the System and its projected costs, and set forth each of the Parties' responsibilities for operation of the System.

Section 4. Conditions Precedent to Parties' Obligations.

This Agreement shall not become effective until all of the following actions have been taken by the responsible Party or Parties:

(a) Execution of this Agreement by the Parties, pursuant to duly adopted resolutions of the Parties' respective corporate authorities.

(b) Approval of the Contract by Winnetka's corporate authorities and timely execution of the Contract Documents by Winnetka.

(c) Approval of the Contract by Wilmette's corporate authorities and timely execution of the Contract Documents by Wilmette.

Section 5. Contract Administration Responsibilities.

(a) Wilmette shall have primary responsibility for administering the Contract, including, without limitation: (i) making timely payments to Vendor when due under the Contract; (ii) meeting with representatives of the Vendor; (iii) reviewing technical and administrative data; (iv) establishing testing programs; (v) monitoring service levels; (vi) ensuring that required repair and maintenance responsibilities are performed by Vendor; and (vii) enforcing the terms and conditions of the Contract.

(b) The Parties shall cooperate to remedy any alleged failures of the work by Vendor under the Contract.

(c) Each of the Parties understands that the operation of the System is subject to the Software License Agreement (as defined in Section 6(c)). Winnetka acknowledges understands and agrees that, notwithstanding Wilmette being the party executing the Contract with Vendor, Winnetka shall be obligated to comply with all provisions of the Software License Agreement with Vendor, including but not limited to those provisions concerning protection of Vendor's copyrighted materials, proprietary information and confidential information, and those provisions concerning use of the software and System. Each of the Parties shall be responsible to indemnify, defend and hold harmless the other Party (including, without limitation, attorney fees, expert witness fees, court costs and settlement) for any claims, demands or liability arising by or to the Vendor or a third party under the provisions of the Software License Agreement as a result of the indemnifying Party's violation of the provisions of the Software License Agreement. The obligations of a Party under this paragraph shall survive the termination of this Agreement.

Section 6. Definitions.

For purposes of administering the Contract and determining the Parties' duties and financial obligations under this Agreement, the following definitions shall apply:

(a) **"System Installation"** shall mean the original construction and installation of the System by Vendor to the point of completion and operation by both parties and satisfying Vendor's construction and installation requirements under the Contract.

(b) **"System Maintenance"** shall mean the ongoing service of the System by Wilmette under this Agreement and by Vendor under its annual maintenance

obligations set forth in the Contract.

(c) **“Call Data Allocation”** shall mean the apportionment between the Parties of the total number of all police dispatch calls, including emergency, non-emergency and service calls as well as false alarms, received by the System during the preceding twelve (12) month period, said apportionment being made according to which Party was the primary jurisdictional responder, for the purpose of establishing the ratio between each Party’s allocated calls and the total number of such calls received by the System.

(d) **“Population Allocation”** shall mean the apportionment of costs according to the relative populations of the Parties, with Wilmette’s portion being 69% and Winnetka’s portion being 31%.

(e) **“System Installation Costs,”** sometimes referred to herein as “SIC,” shall mean the total amount of Vendor’s charges for installing the System, as set out in the “Total Cost Summary,” which is defined in paragraph (g) of this Section 6.

(f) **“System Maintenance Costs,”** sometimes referred to herein as “SMC,” shall mean and include: (i) the costs billed by Vendor for services provided in maintaining the System, as specified in Exhibit A to this Agreement, as described in the following paragraph (g), and modified in accordance with the terms of the Contract or any extensions thereto (“Contractual System Maintenance”); (ii) the ongoing costs of maintaining the System after the expiration of the Contract and any extensions thereto, as described in Sections 8 and 9 of this Agreement (“Post-Contract System Maintenance”); (iii) the lease payment or other user fee incurred for the use of T-1 data lines between the Parties’ police facilities necessary to operate the System and intended; and (iv) the costs of activating and maintaining the fiber optic lines connecting the system servers.

(g) **“Software License Agreement”** means that part of the Contract Documents containing the terms and conditions for use of Vendor’s software for the System, and related costs and expenses, which document, including exhibits and appendices thereto, is titled “Standard Software License and Services Agreement,” as prepared by Vendor dated February 22, 2007, and executed by the Vendor on February 28, 2007, and a copy of which is attached hereto as Exhibit A..

Section 7. Contract Costs and Payments to Vendor.

(a) **Payments to Vendor.** Wilmette shall be responsible for the timely payment of all payments due Vendor under the Contract. In the event of a late payment, Wilmette shall be responsible for all late charges, interest and penalties assessed by Vendor, unless the late payment was caused by Winnetka’s failure to make a timely payment of its share of the SIC or SMC to Wilmette.

(b) **Payment of System Installation Costs.** From time to time, Winnetka shall remit to Wilmette the amount then due of Winnetka’s share of the SIC, as allocated according to Sections 8 and 9 of this Agreement, and illustrated in Exhibit B to this

Agreement. Payments shall be made according to the following terms:

(i) Date due. Winnetka's payments shall be sent to Wilmette no later than thirty (30) days prior to the date the SIC are due and payable to Vendor under the Contract. For all other SIC payments not subject to a payment schedule established by the Contract, Winnetka's payment to Wilmette shall be due within thirty (30) days of Wilmette's issuance of the invoice to Winnetka.

(ii) Use of payments. Except as provided in the following paragraph (iii), all SIC payments from Winnetka shall be used by Wilmette for payments on the Contract to Vendor.

(iii) Excess Payments. Upon completion of the System Installation, if the amount paid by Winnetka pursuant to this Section exceeds its share of the SIC under the Contract, as allocated according to Sections 8 and 9 of this Agreement and illustrated in Exhibit B, such funds shall remain on deposit with Wilmette and shall be credited against any amount due from Winnetka for System Maintenance, provided that (i) the amount of such surplus does not exceed Winnetka's share of the next scheduled payment of SMC, and (ii) the next payment of SMC is due within 60 days of the date the surplus amount is determined.

(iv) Underpayments. If, during or upon the completion of System Installation, the amount paid by Winnetka pursuant to this Section is less than its share of SIC under the Contract, as allocated according to Sections 8 and 9 of this Agreement and illustrated in Exhibit B, Wilmette shall invoice Winnetka for such additional amount, which shall be paid to Wilmette within thirty (30) days of the issuance of the invoice.

(c) Payment of Maintenance Costs. From time to time after the completion of System Installation, Winnetka shall pay its share of the System Maintenance Costs to Wilmette, as determined according to Sections 8 and 9 of this Agreement and illustrated in Exhibit B. Such payments to Wilmette shall be made no later than thirty (30) days prior to the date the System Maintenance Costs are due and payable to Vendor under the Contract.

(d) Cost Adjustments; Change Orders. The Parties, and each of them, acknowledge and understand that the costs set forth in the Contract Documents, are subject to the terms of the Contract, and may be subject to adjustment based on the provisions of the Contract, and that the allocation of costs for the System set forth in this Agreement is intended to apportion the total delivered costs of the Contract, even if they vary from the costs set out in Exhibit A. Notwithstanding the foregoing, neither Party shall initiate or approve any change orders or alterations of any kind to the System that would increase the cost to the other Party without the written approval of that Party.

(e) Contract Extensions. No option to extend the Contract for maintenance of the System shall be approved without the concurrence of both Parties and their

approval in conformance with their respective Ordinances and rules governing purchasing.

Section 8. System Maintenance, Accounting and Billing Procedures.

(a) System Maintenance during and after the Contract. The Parties, and each of them, shall cooperate in good faith to determine the means and costs of all Contractual System Maintenance and Post-Contractual System Maintenance. During the term of the Contract, and any extension thereof, all Contractual SMC shall be determined in the manner provided in the Contract. The cost of any Post-Contractual maintenance that is not Additional System Maintenance or Individual System Maintenance as defined in this Section 8, shall be determined in the manner provided in any contract or work order for such service and shall be allocated among the Parties in the same manner as Contractual SMC.

(b) Individual System Maintenance Costs. Except as pertains to the maintenance of the fiber optic lines owned by the Village of Winnetka and used to connect the two server locations in the Village of Winnetka, each Party assumes the obligation to maintain the components of the System that it owns, to the extent such maintenance is not covered by the Contract ("Individual System Maintenance"), so as to maintain the functionality and operational capability of the System. Such Individual System Maintenance includes, but is not limited to, replacement of a Party's System components that have failed or have become non-functional (e.g. a server owned by one of the Parties that breaks down and needs repair or replacement).

(c) Additional System Maintenance. The Parties anticipate that, from time to time, in addition to the annual software maintenance to be provided by Vendor under the terms of the Contract, the System will require routine, ongoing maintenance such as server reboots, update installations, patch installation, and server maintenance ("Additional System Maintenance").

(i) The Parties agree that Wilmette's Systems Administrator employee shall be primarily responsible for providing such Additional System Maintenance, although Winnetka reserves the right to perform such services on the portions of the System that are owned by the Village of Winnetka at Winnetka's sole expense. The Additional System Maintenance is generally anticipated to be for the benefit of both Parties or the System as a whole, while other Additional System Maintenance work performed from time to time may be solely for the benefit of a single Party and may include Individual System Maintenance.

(ii) The Parties agree and understand that the fiber optic lines connecting the two servers located in the Village of Winnetka are owned and operated by the Village of Winnetka's municipal electric utility. Notwithstanding the foregoing, the Parties agree and understand that all repairs and maintenance of said fiber optic lines (hereinafter "Fiber Optic Maintenance") shall be considered Additional System Maintenance and shall be performed by Winnetka's electric utility.

(d) Recordkeeping Requirements. Wilmette and Winnetka shall each track and document the Post-Contractual Maintenance, Additional Maintenance and Individual System Maintenance performed by their own employee or employees, identifying the type of work and the number of hours spent on such work, and whether it was performed solely for Winnetka, solely for Wilmette, or for the System as a whole. The Parties shall provide each other with a copy of such report on a quarterly basis.

(e) Determining Individual and Additional System Maintenance Costs. The cost of Individual System Maintenance and Additional System Maintenance provided by Wilmette shall be based upon the number of hours worked by the employee or employees performing such work, at the regular rate of pay of Wilmette's Systems Administrator employee, including Wilmette's actual cost of payroll taxes and fringe benefits ("Wilmette's Employee Costs"). Wilmette shall provide Winnetka with the rate of Employee Costs within 10 days after this Agreement goes into effect and shall thereafter notify Winnetka within 10 days after any change in such Employee Costs. In the event a Winnetka employee provides any System Maintenance or Additional Maintenance (other than that performed solely for Winnetka), the costs of System Maintenance, Additional Maintenance shall be subject to the same formulas and notification requirements that apply to Wilmette, and shall be calculated based on rate of Wilmette's Employee Costs. Notwithstanding the foregoing, all Fiber Optic Maintenance performed by the Village of Winnetka's municipal electric utility shall be billed to the Parties according to Winnetka's standard billing practices for such work.

(f) Apportionment and Billing for Individual and Additional System Maintenance. The cost of the Individual System Maintenance and Additional System Maintenance described in subsections (b) through (e) of this Section 8 shall be apportioned as follows: (i) all costs of Additional System Maintenance for the benefit of the System or for the joint benefit of both Parties, including Fiber Optic Maintenance, shall be treated as part of the overall System Maintenance Costs ("SMC") and shall be allocated as provided in Section 9(b) of this Agreement; (ii) all costs of Individual System Maintenance and Additional System Maintenance provided for the sole benefit of Winnetka shall be excluded from the overall SMC and shall be borne solely by Winnetka; and (iii) all costs of Individual System Maintenance and Additional System Maintenance provided for the sole benefit of Wilmette shall be excluded from the overall SMC and shall be borne solely by Wilmette.

(g) Frequency of Billing. Wilmette shall be entitled to invoice Winnetka for Winnetka's share of SMC, Individual System Maintenance and Additional System Maintenance on a quarterly basis. Wilmette may, at its sole option, bill on a less frequent basis, provided that it bills Winnetka at least once per year and provided that Wilmette submits quarterly records of its Employee Costs, as provided in Section 8(g) of this Agreement. Winnetka shall pay such bills no later than thirty (30) days after they are issued. For Additional System Maintenance work and Non-Contractual Maintenance Work performed for the benefit of both Parties, Wilmette shall be entitled to reimbursement for Winnetka's proportionate share of said costs, as calculated using the applicable allocation formula for that year set as set forth in Exhibit B. Such

invoices shall be issued no less than 45 days before payments are due any vendor, and shall be paid no later than thirty (30) days after issuance.

Section 9. Apportionment of Costs.

(a) **System Installation Costs ("SIC").** It is the intention of the Parties that the total costs of the System Installation be divided between the Parties according to the following formulation: (i) one-half of the total costs of System Installation shall be divided equally between the Parties; and (ii) one-half of the cost of System Installation shall be apportioned according to the Population Allocation. The mathematical formula for the apportionment of SIC is set forth in Exhibit C. To the extent that the Parties obtain grant monies to cover part of the SIC, all funds received as a lump sum grant shall be applied to reduce the total cost of the SIC and shall be allocated according to the formulas set forth in Exhibit C. To the extent that the Parties receive individual allocations from the Illinois *cy pres* grant fund established to distribute municipal telecommunications infrastructure maintenance fee funds (for which the Parties have submitted a joint application), or any other individual grant monies to cover part of the SIC, such *cy pres* fund allocations or other individual grant funds shall be applied to the grantee Party's individual allocation of the SIC, rather than to the total SIC.

(b) **System Maintenance Costs ("SMC").** It is the intention of the Parties that after completion of System Installation, the on-going costs of System Maintenance shall initially be based on the Population Allocation, and shall gradually transition to a formula based on the Call Data Allocation, according to the schedule set forth in the table that follows this paragraph, the mathematical formula for which is set forth in Exhibit C to this Agreement.

<u>Contract Year</u>	<u>Method of Apportioning SMC</u>
One	100% by Population Allocation
Two	100% by Population Allocation
Three	100% by Population Allocation
Four	2/3 by Population Allocation 1/3 by Call Data Allocation from Year 3
Five	1/3 by Population Allocation 1/3 by Call Data Allocation from Year 3 1/3 by Call Data Allocation from Year 4
Six and after	100% by Call Data Allocation, with each of the three immediately prior years being assigned 1/3 of the total

(c) Non-Contract Hardware. The costs of the initial purchase and installation of Non-Contract Hardware, as defined in Section 11(c), below, and the costs of replacing such Non-Contract Hardware, shall be divided equally between the Parties; provided that all costs related to the purchase, installation and maintenance of individual work stations shall be subject to the provisions of Section 11(d), below.

Section 10. Location of System Hardware; Records.

(a) Location of Hardware. The design of the System provides that the principal computer server shall be located at the Wilmette Police Department, and that a second computer server capable of acting as a backup shall be located at the Winnetka Police Department.

(b) Ownership of Records. Any records of either Party stored on the System shall be deemed to be the record of, and shall be maintained by, the Party that entered such record into the System.

Section 11. Ownership of System Hardware and Components; Risk of Loss; Insurance.

(a) Contract Hardware.

(i) Ownership During Installation. During System Installation, ownership of and title to hardware and other components of the System purchased from Vendor under the Contract shall be as determined by the Contract.

(ii) Post-Installation Ownership. At such time that, under the Contract, ownership of and title to any or all of the System components covered by the Contract has passed to Wilmette, ownership of and title to such System components located in Winnetka shall be deemed to immediately have been conveyed by Wilmette to Winnetka without further action by Wilmette. .

(b) Risk of Loss. Each of the Parties shall, upon acquiring ownership of and title to Contract Hardware, Non-Contract Hardware and other components of the System, bear the risk of loss for such property to the extent such risk is not already provided for in the Contract or Contract Documents (including but not limited to any warranty applicable to any portion of the System by virtue of the terms of the Contract or by operation of law). The purpose of this Section is not to relieve Vendor of any duty, obligation or risk of loss under the Contract, but is intended solely to apportion risk between the Parties and define the duties of the Parties.

(c) Non-Contract Hardware. The Parties agree to jointly purchase such computer hardware as the Parties agree, through system specifications, is necessary to provide data storage and access at both Parties' communications facilities. Such equipment may include, without limitation, computer servers (both a live production server and a mirror server), attached storage devices, battery back-up devices, networking or connectivity devices and affiliated equipment. It is the intent of the

Parties that such equipment be redundant and provide storage for both Parties' data, with mirror configurations residing at locations to be determined jointly by the Parties, so that each server will have the ability to keep the other Party's data available in the event of a file server failure. To the extent that such equipment is not part of the purchase from Vendor under the Contract ("Non-Contract Hardware"), the ownership of such equipment shall transfer to the Parties under the terms of the purchase of such hardware. Upon the termination of this Agreement, such Non-Contract Hardware shall be divided equally between the Parties. Notwithstanding the foregoing, any fiber optic lines installed by the Village of Winnetka to connect the servers within the Village of Winnetka, shall remain the property of the Village of Winnetka and shall not be considered or included when dividing Non-Contract Hardware.

(d) Work Stations. Any individual work stations, such as computers and terminals designed for day-to-day access to System data, that are acquired by an individual Party and are not purchased under the Vendor Contract shall not be considered Contract Hardware or Non-Contract Hardware, and the Party that acquired such work stations shall be solely responsible for its purchase, maintenance and replacement.

(e) Insurance. For those System components for which a Party bears risk of loss, that party shall provide coverage for such risk either through any one or more of the following: (i) self-insurance; (ii) purchase of one or more commercial lines of insurance; or (iii) coverage for loss through membership in the Intergovernmental Risk Management Agency (IRMA) or other intergovernmental risk management pool.

Section 12. Dispute Resolution; Litigation.

(a) Disputes Between the Parties.

(i) Negotiation. The Parties desire to resolve without litigation any disputes that may arise between them regarding the terms of this Agreement. Accordingly, the Parties agree to engage in good faith negotiations to resolve any such dispute. If a Party has a dispute regarding a provision of this Agreement, then that Party may serve on the other Party written notice, delivered as provided in Section 13(c) of this Agreement, setting forth in reasonable detail the dispute, the provisions of this Agreement to which the dispute is related, and the facts and circumstances pertinent to the dispute. The Parties then, within 30 days, shall schedule a date for representatives of the Parties to meet in a conference to resolve the dispute. Such conference shall be conducted within 60 days after notice of the dispute has been delivered as provided in this paragraph.

(ii) Continuation of Agreement. During all negotiation proceedings and any subsequent proceedings provided for in this Section, the Parties shall continue to fulfill the terms of this Agreement to the fullest extent possible.

(iii) Remedies. Provided that the Parties have met their obligations under this Section, the Parties shall be entitled to pursue such remedies as may be available

in law and equity.

(iv) Waiver of Requirements. The requirements of this Section shall be waived in the event of either significant risk of irreparable harm or significant jeopardy to public health and safety.

(b) Disputes with Vendor or Third-Parties. The Parties shall cooperate in good faith to resolve disputes with Vendor concerning Vendor's performance under the Contract, or with third parties concerning installation, operation or maintenance of the System, and to protect each Party's rights against the Vendor or third parties.

(c) Litigation.

(i) Litigation Commenced by One Party. Litigation shall not be commenced by one of the Parties against Vendor or a third party on a subject matter arising from or under the provisions of the Contract or this Agreement without the consent of the other Party, which consent shall not be unreasonably withheld. Both Parties shall, in good faith, determine the apportionment of the costs of such litigation (including, without limitation, attorney fees, expert witness fees, court costs and settlement) based on the relative interest of each Party in said litigation. If each Party is responsible for a portion of the costs of such litigation, one Party shall not settle, compromise, waive or dismiss a claim made in litigation without the consent of the other Party, which shall not be unreasonably withheld.

(ii) Litigation Commenced Against a Party. If litigation is commenced against either or both of the Parties by Vendor or any third party on a subject matter arising from or under the provisions of the Contract or this Agreement, then any Party served with notice of such litigation shall notify the other Party of the commencement of such litigation and both Parties shall, in good faith, determine the apportionment of the costs of such litigation (including, without limitation, attorney fees, expert witness fees, court costs and settlement) based on the relative interest of each Party in said litigation. Liability for any judgment against either or both of the Parties shall be apportioned according to the judgment. If both Parties are named defendants, or if each Party is responsible for any of the costs of such litigation, one Party shall not settle, compromise, waive or dismiss a claim made in litigation without the consent of the other Party, which shall not be unreasonably withheld.

(iii) Assignment of Rights. Subject to the provisions of Section 14(i) of this Agreement, either Party may, at the request of the other, assign any of its rights under this Agreement or the Contract to the other Party for purposes of litigation with Vendor or third parties covered by this paragraph (c).

Section 13. Term; Renewal; Termination.

(a) Initial Term. The term of this Agreement shall be ten (10) years, commencing on the last date this Agreement has been fully executed by Winnetka and Wilmette, as

indicated by their signatures below.

(b) Renewal; Non-renewal. This Agreement shall be renewed automatically for additional terms of five (5) years unless written notice of a Party's intent not to renew is provided to the other Party not less than ninety (90) days prior to the end of the then-current term.

(c) Termination. A Party may terminate this Agreement during its term or renewal term by providing written notice to the other Party of such termination, which shall include a certified copy of a resolution of its corporate authorities directing the Party's termination of the Agreement. Such termination shall be effective not less than ninety (90) days following receipt of notice by the other Party.

(d) Liability upon Termination. A Party terminating this Agreement pursuant to paragraph (c) of this Section shall still be liable to pay its share of any and all costs and expenses incurred by the Parties under this Agreement prior to the effective date of the Party's withdrawal, and additionally, its share of the SIC and SMC under the Contract if such financial obligations under the Contract survive that Party's termination of the Agreement. A Party terminating this Agreement prior to the end of the term of the Contract with Vendor shall be responsible to indemnify, defend and hold harmless the other Party (including, without limitation, attorney fees, expert witness fees, court costs and settlement) for any claims, demands or liability arising by or to the Vendor or a third party under the provisions of the Contract as a result of the termination of this Agreement. The obligations of a Party under this paragraph shall survive the termination of this Agreement.

Section 14. Miscellaneous Provisions.

(a) Compliance with External Laws and Regulations. The Parties agree to comply with all applicable federal, state, county and municipal laws, ordinances, rules, regulations, and orders, in connection with the purchase, development, testing, use, operation, and maintenance of the System and keeping of records on the System.

(b) Rights Cumulative. Unless otherwise set forth in this Agreement, the rights and remedies of the Parties, whether provided by law or this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by the other Party.

(c) Notice. Any notice or other communication given under this Agreement shall be in writing and sent by registered or certified U.S. mail, overnight courier service, telecopier/facsimile or personal delivery, as follows:

(i) If to Wilmette: Office of the Village Manager
Village of Wilmette
1200 Wilmette Avenue
Wilmette, IL 60091

Telecopier: (847) 853-7700

(ii) If to Winnetka: Office of the Village Manager
Village of Winnetka
510 Green Bay Road
Winnetka, IL 60093
Telecopier: (847) 501-3180

All Notices sent by certified or registered mail shall be considered to have been given and received two (2) business days after being deposited in the mail. All Notices sent by overnight courier service, telecopier or personal delivery shall be considered given when actually received by the intended recipient.

(d) Time of the Essence. Time is of the essence in the performance of this Agreement.

(e) Applicable Law and Construction. This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws, excluding its conflicts and choice of law rules. Each Party agrees that, having been represented by competent legal counsel and having had full and fair opportunity to negotiate on an equal basis concerning its terms, the terms contained herein shall not be construed against a party merely because that party is or was the principal drafter.

(f) Entire Agreement. This Agreement, including its Exhibits and all other documents incorporated by reference, constitutes the entire agreement between the Parties and supersedes all prior written or oral understandings, agreements and representations by the Parties in any way relating provisions of the Agreement.

(g) Amendments. This Agreement may be amended at any time by the mutual agreement of the Parties. No amendment or modification of this Agreement shall be effective unless it is in writing, and is duly authorized and signed by both Parties. E-mail messages shall not constitute a signed agreement of the Parties.

(h) No Third Party Beneficiaries. This Agreement creates no rights, title or interest in any person or entity, whether under a third-party beneficiary theory or otherwise, other than Winnetka and Wilmette.

(i) Assignment; Transfer. This Agreement shall not be assigned or transferred by either Party without the consent of the other Party, which consent shall be in writing and duly authorized by the consenting Party's corporate authorities.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

VILLAGE OF WILMETTE, ILLINOIS,
an Illinois home rule municipal

VILLAGE OF WINNETKA, ILLINOIS,
an Illinois home rule municipal

corporation,

BY: _____
Village President

ATTEST: _____
Village Clerk

DATE: _____

[SEAL]

corporation,

BY: _____
Village President

ATTEST: _____
Village Clerk

DATE: _____

[SEAL]

EXHIBIT A
VENDOR'S SOFTWARE LICENSE AGREEMENT
February 22, 2007

EXHIBIT B

APPORTIONMENT OF CONTRACT COSTS BETWEEN PARTIES

I. System Installation Costs Allocation Formula.

With System Installation costs being represented as "SIC", the allocation formula set forth in Section 7 of this Agreement, is stated mathematically as follows:

- **Wilmette's share of the System Installation cost is 59.5%**

$$SIC_{\text{Wilmette}} = [50\% \times (50\% \times SIC)] + [69\% \times (50\% \times SIC)] = 59.5\% \times SIC$$

- **Winnetka's share of the System Installation cost is 40.5%.**

$$SIC_{\text{Winnetka}} = [50\% \times (50\% \times SIC)] + [31\% \times (50\% \times SIC)] = 40.5\% \times SIC$$

Illustration: Based on the Total Cost Summary in Exhibit B, SIC = \$697,550. Applying the above formula to that number, Wilmette's share is \$415,042.25, and Winnetka's share is \$282,507.75. It should be noted, however, that the final SIC is subject to adjustments, as provided in Section 6(c) of this Agreement.

II. System Maintenance Costs Allocation Formula.

With System Maintenance Costs being represented as "SMC", Population Allocation being represented as "PA" and Call Data Allocation for the three years preceding the current year being represented as "CDA-1," "CDA-2," and "CDA-3," the allocation formula set forth in Section 7 of this Agreement, is stated mathematically as follows:

Years 1, 2 and 3:

- **Wilmette's share:** $SMC_{\text{Wilmette}} = 69\% \times SMC$
- **Winnetka's share:** $SMC_{\text{Winnetka}} = 31\% \times SMC$

Year 4:

- **Wilmette's share:** $SMC_{\text{Wilmette}} = \frac{2}{3} (69\% \times SMC) + \frac{1}{3} (CDA-1_{\text{Wilmette}} \times SMC)$
- **Winnetka's share:** $SMC_{\text{Winnetka}} = \frac{2}{3} (31\% \times SMC) + \frac{1}{3} (CDA-1_{\text{Winnetka}} \times SMC)$

Years 5:

- **Wilmette's share:** $SMC_{\text{Wilmette}} = \frac{1}{3} (69\% \times SMC) + \frac{1}{3} (CDA-1_{\text{Wilmette}} \times SMC) + \frac{1}{3} (CDA-2_{\text{Wilmette}} \times SMC)$
- **Winnetka's share:** $SMC_{\text{Winnetka}} = \frac{1}{3} (31\% \times SMC) + \frac{1}{3} (CDA-1_{\text{Winnetka}} \times SMC) + \frac{1}{3} (CDA-2_{\text{Winnetka}} \times SMC)$

Years 6 and after:

- **Wilmette's share:** $SMC_{\text{Wilmette}} = \frac{1}{3} (CDA-1_{\text{Wilmette}} \times SMC) + \frac{1}{3} (CDA-2_{\text{Wilmette}} \times SMC) + \frac{1}{3} (CDA-3_{\text{Wilmette}} \times SMC)$
- **Winnetka's share:** $SMC_{\text{Winnetka}} = \frac{1}{3} (CDA-1_{\text{Winnetka}} \times SMC) + \frac{1}{3} (CDA-2_{\text{Winnetka}} \times SMC) + \frac{1}{3} (CDA-3_{\text{Winnetka}} \times SMC)$