



ORDINANCE NO. 1901-18

AN ORDINANCE RATIFYING AND CONFIRMING THE EXECUTION OF A  
PREVIOUSLY EXECUTED AGREEMENT—EOSULLIVAN CONSULTING

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that this ordinance is ratification in furtherance of a previously executed Messaging Service Agreement with EOSullivan. Such Agreement is by and between the Village of Hawthorn Woods and EOSullivan Consulting, a copy of which is attached hereto as Exhibit "A", and, by this reference made a part hereof.

The foregoing Ordinance was adopted by the Village Board of the Village of Hawthorn Woods, Illinois, on November 26, 2018:

AYES: Kaiser, Kosik, Riess, David

NAYS: 0

ABSENT AND NOT VOTING: Corrigan, Dimaggio

APPROVED:   
Joseph Mancino, Mayor

ATTEST:   
Donna Lobaito, Village Clerk

PASSED: November 26, 2018

APPROVED: November 26, 2018

PUBLISHED: November 27, 2018



**MESSAGING SERVICE AGREEMENT**

General Contact Information		
<b>Village of Hawthorn Woods</b> Company Name 847-847-3535 Phone 2 Lagoon Drive Sub/Bldg/Dept IL State/Province	<b>Pamela Newton</b> Contact Name 847-847-3536 Fax Address 60047 Post Code	<b>Chief Operating Officer</b> Title pnewton@vhw.org E-mail Hawthorn Woods City USA Country
Billing Contact Information (if Different From Above)		
Contact Name E-mail State/Province    City	Phone Address Post Code	Fax Sub/Bldg/Dept Country
Notes		
<p>Please note:                      All verbal and written messaging needs Mayoral approval before initiating in Hawthorn Woods.  <span style="float: right; border: 1px solid black; border-radius: 50%; padding: 2px;">pm</span></p>		
Agreement		
I have read and agreed to the Terms and Conditions herein. EOSullivan Consulting and the undersigned agree that an electronic transmission of this agreement is mutually acceptable and legally binding.		
Name: <u>Pamela O. Newton</u> Title: <u>COO</u>	Signature: <u>Pamela O. Newton</u> Date: <u>11/13/18</u>	

## 1.0 SERVICES

1.1 EOSullivan Consulting ("EOSullivan") will provide communications services, as amended from time to time, ("Services") to the EOSullivan customer identified in the signature block of this Customer Service Agreement ("Customer") in consideration of payment based on the rates specified herein, and the promises contained in this Agreement.

1.2 Services shall be provided to Customer in accordance with Customer's instructions that are properly formatted and transmitted by Customer in accordance with EOSullivan's current published documentation which, in addition to the terms hereof, shall be located at [www.EOSullivanConsulting.com](http://www.EOSullivanConsulting.com) (the "EOSullivan Web Site"). EOSullivan is not responsible, and disclaims any intention, to provide or comply with any special instructions, additional specifications, or requirements not listed in published documentation pertaining to the Services.

1.3 You represent and warrant that you are at least eighteen (18) years of age or, as applicable, the age of majority in the state or province in which you reside, and that you possess the legal right and ability to enter into this Agreement. You agree to be financially responsible for your use of Services (as well as for use of your account by others, including minors living with you) and to comply with your responsibilities and obligations as stated in this Agreement.

## 2.0 TERM AND MINIMUM COMMITMENT

2.1 This Agreement is effective upon the date shown on page 1 hereof (the "Effective Date") and shall continue for a minimum term of twelve (12) months, unless a longer or shorter term is specified ("Initial Term"). This Agreement will automatically renew for successive one-year terms ("Renewal Terms"), unless either party delivers written notice of intention not to renew at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.

2.2 Either party may terminate this Agreement at any time ~~in the event that the other party breaches any provision of this Agreement in any material respect and fails to cure such breach within thirty (30) days after receipt of written notice of such breach. Notwithstanding the foregoing,~~ EOSullivan may terminate this Agreement and/or suspend the provision of Services immediately for illegal, fraudulent or improper use of the Service (including without limitation Customer's use of the Services in contravention of Article 5), if any portion of an invoice remains unpaid when due or for breach, not subject to cure. EOSullivan shall not be liable to Customer or any third party should EOSullivan exercise its right to discontinue Services, in whole or in part, or terminate this Agreement pursuant to this Section 2.2.

## 3.0 INSTALLATION AND TRAINING

Installation and training are the sole responsibility of Customer unless purchased separately from EOSullivan.

## 4.0 PAYMENT; TERMS AND RATES

4.1 EOSullivan reserves the right, in its sole discretion, to change or institute new or additional charges for access to or use of Services at any time upon not less than thirty (30) days notice to its customers in accordance with the terms of Section 7.1.1 hereof.

4.2 The provision of Services under this Agreement is subject to credit verification and acceptance by EOSullivan. EOSullivan may, in its sole discretion, request advance payment, in whole or in part, from Customer or change its payment terms at any time. Charges incurred on your account will be deducted from any prepayment made to EOSullivan. Prepayment is non-refundable and must be used for services. EOSullivan may cancel or re-schedule orders if EOSullivan determines, in its sole discretion, that Customer's financial condition or previous payment record warrants such change.

4.3 If Charges for use of Services are invoiced, payment is due upon receipt of invoice by Customer. Customer must notify EOSullivan of any charge disputed in good faith, with supporting documentation, within thirty (30) days from receipt of invoice, or Customer will be deemed to agree to such charges and no adjustments to charges or invoices will be made. Customer shall continue to be responsible to pay for the undisputed charges on the invoice by the due date.

4.4 Past-due balances shall be subject to an interest charge of one and one half percent (1.5%) per month computed from the due date of each invoice previously issued, or the maximum rate legally permitted, whichever is less.

4.5 Customer shall pay any collection charges or other expenses, including reasonable attorney's fees, incurred by EOSullivan to collect any sums due under this Agreement.

4.6 Customer shall pay, and EOSullivan reserves the right to collect in arrears, all sales, use, excise or other taxes, fees or charges of any nature whatsoever, now or hereafter imposed or assessed on EOSullivan, by federal, state, county or local government authority upon or with respect to the Services provided.

4.7 Customer acknowledges that Customer is the authorized signer on this account and personally guarantees payment to EOSullivan. Customer also authorizes EOSullivan to perform verification of funds with Customer's financial institution and any other credit investigation deemed necessary.

## 5.0 LEGAL COMPLIANCE; INDEMNIFICATION

5.1 Customer acknowledges that EOSullivan has no control over the content of information or distribution lists provided by Customer and transmitted through the Services and that EOSullivan does not examine the use to which Customer puts the Services or the nature of the information Customer or Customer's users send or receive. Customer agrees not to transmit content through use of the Services that is unlawful, threatening, abusive, harassing, libelous, deceptive, fraudulent, invasive of another's privacy, vulgar, obscene or otherwise contains objectionable material of any kind or nature. Customer is

responsible for maintaining the confidentiality of, and shall not transfer sell or assign, access numbers, pass codes and user names provided by EOSullivan solely for use by Customer. It is the sole responsibility of Customer to use Services in accordance with all applicable local, state, federal and foreign laws and regulations, including but not limited to, laws and regulations pertaining to telemarketing, facsimile advertising, commercial e-mail and personal data privacy. CUSTOMER ACKNOWLEDGES THAT THE ADVERTISING OF GOODS, PRODUCTS OR SERVICES BY THE TRANSMISSION OF UNSOLICITED VOICE MESSAGES, FACSIMILES, E-MAIL OR TEXT MESSAGES MAY BE IN VIOLATION OF FEDERAL, STATE AND FOREIGN LAWS AND REGULATIONS AND MAY SUBJECT THE ADVERTISER TO PENALTIES. Customer also agrees to comply with EOSullivan Privacy and SPAM Policies, located on the EOSullivan Web Site and incorporated herein by this reference; as such policies may be amended from time to time during the term of this Agreement. Breach by Customer of this Section 5.1 is grounds for immediate suspension by EOSullivan of Services and termination of this Agreement. Compliance with this Section 5.1 requires, among other things, that all messages sent by Customer utilizing the Services, in whatever medium, contain the valid name and required contact information for Customer, and that Customer shall comply promptly with any "do not call" or "do not send" request.

5.2 In the event Customer utilizes Services, for all Services including but not limited to telemarketing activities or disseminating materials offering the availability of goods or products or services, Customer specifically warrants to EOSullivan (i) that it will undertake all required actions necessary to comply with applicable federal, state or foreign "Do Not Call" and telemarketing registration statutes and regulations and (ii) Customer will not utilize the Services in a manner which results in a violation of any applicable laws or regulations with respect to such Services.

5.3 Customer shall indemnify, defend and hold EOSullivan, its officers, directors, employees, and affiliates harmless from any claims, losses, costs, damages or penalties (including, without limitation, reasonable attorney's fees) arising out of (i) Customer's use of the Services or EOSullivan's provision of Services, or (ii) Customer's violation of or alleged violation, or EOSullivan's violation of or alleged violation, of any applicable laws or regulations with respect to the Services, included but not limited to, any claims that the Services violated the rights of any third party (including those claims relating to the content provided by Customer or EOSullivan use of Customer's distribution lists on behalf of Customer) or claims relating to the transmission of unsolicited transmissions, the attempted transmission of a document to a residence telephone or for any errors in data or distribution information provided by Customer.

#### 6.0 DISCLAIMERS AND LIMITATION OF LIABILITY

6.1 EOSULLIVAN DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EOSULLIVAN'S TOTAL LIABILITY FOR DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT, WHETHER TO CUSTOMER OR ANY OTHER PARTY AND REGARDLESS OF

THE FORM OF ACTION, IS LIMITED TO AN AMOUNT EQUIVALENT TO THE CHARGES BY EOSULLIVAN TO CUSTOMER FOR THE PARTICULAR SERVICE PERFORMED BY EOSULLIVAN DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE OF EVENT, ACT OR OMISSION GIVING RISE TO THE LIABILITY.

6.2 IN NO EVENT SHALL EOSULLIVAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OTHER MONETARY LOSS; LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME; ALTERATION OR ERRONEOUS TRANSMISSION OF DATA; ACCURACY OF DATA; UNAUTHORIZED ACCESS TO OR USE OF DATA PROCESSED OR TRANSMITTED BY, TO OR THROUGH THE SERVICE; PROGRAM ERRORS; OR PATENT, TRADE SECRET OR COPYRIGHT INFRINGEMENT) EVEN IF EOSULLIVAN IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

#### 7.0 GENERAL

7.1 Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms of this Agreement shall not be affected or impaired thereby.

7.2 The failure of either party to enforce any term or condition of this Agreement shall not constitute a waiver of either party's right to enforce each and every term and condition of this Agreement.

7.3 This Agreement shall not be assigned by Customer without the prior written consent of EOSullivan.

7.4 This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives and authorized assigns.

7.5 Articles 4.0, 5.0, 6.0 and 7.0 shall survive termination of this Agreement.

7.6 (h) *Arbitration*. Please read this carefully and initial to the bottom right. It affects your rights. EOSullivan and you (referring to the individual executing this agreement in his/her individual capacity) and the Company (such references include our respective subsidiaries, affiliates, predecessors in interest, successors and assigns) agree to arbitrate all disputes and claims arising out of or relating to this Agreement, and to any prior oral or written agreement between EOSullivan and you and/or the Company. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation. All issues are for the Arbitrator to decide, including the scope of this arbitration clause, but the arbitrator is bound by the terms of this Agreement. The arbitration shall be governed by the Commercial Dispute Resolution Procedures of the American Arbitration Association. ("AAA"), as modified by this Agreement, and shall be administered by the AAA. The AAA rules are available at [www.adr.org](http://www.adr.org). You and the

Company agree that by entering into this Agreement you and/or the Company and EOSullivan are waiving the right to a trial by jury. All hearings conducted as part of the arbitration shall take place in Cook County, Illinois. YOU, AND/OR THE COMPANY, AND EOSULLIVAN MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR, THE COMPANY'S OR EOSULLIVAN'S INDIVIDUAL CAPACITY, and not as a plaintiff, defendant, or class member in any purported class or representative proceeding. Further, you and the Company agree that the arbitrator may not consolidate proceedings or more than one individual's or entity's claims, and may not otherwise preside over any form of a representative or class proceeding. The parties agree to the following Submission to Jurisdiction. The parties hereto irrevocably and unconditionally (i) agree that any suit, action, or other legal proceeding, including enforcement of the arbitration award, arising out of or relating to this Agreement or any other agreement, document or instrument delivered pursuant to, or in connection with this Agreement shall be brought and maintained in the State or Federal Courts in and for the County of Cook, State of Illinois; (ii) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (iii) waive any objection which it or they may have to the laying of venue of any such suit, action, or proceeding in any of such courts.

7.7 Each party enters into this Agreement solely for its own benefit and purpose. This Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of messages transmitted through the Services.

7.8 Customer agrees to allow EOSullivan to name Customer as a client of EOSullivan in any marketing material EOSullivan may create from time to time. EOSullivan will not use Customer Marks, other than the corporate name of Customer, in any such materials without the prior written consent of Customer, which consent shall not be unreasonably withheld.

7.9 This Agreement and the pricing terms referenced herein shall be considered confidential information of EOSullivan. Customer agrees not to disclose such confidential information to any third parties.

*Village is subject to FOIA laws. (Pru)*

7.10 This Agreement, including any schedules or exhibits, or amendments thereto (including amendments pursuant to Section 7.11 hereof), constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all other agreements between the parties relating to the matters discussed herein, whether written or verbal. Other than this Agreement, there are no verbal agreements, representations, warranties, undertakings or other agreements between the parties.

7.11 EOSullivan may amend at any time the provisions of this Agreement and EOSullivan's Privacy and SPAM Policies by, at EOSullivan's election, (i) posting revised terms and conditions ("Amended Terms") on the EOSullivan Web Site or (ii) delivering the Amended Terms to Customer at the address, fax or e-mail address provided herein (such delivery may be included in invoices for the Services delivered to Customer). All Amended Terms shall automatically be effective 30 days after such amendment is posted on the EOSullivan Web Site or delivery to Customer as provided above. Customer agrees

to be responsible for regularly reviewing the EOSullivan Web Site to obtain timely notice of any such amended terms and EOSullivan's then-current terms and conditions and privacy and spam policies. By using the Services after posting or deliver of Amended Terms, Customer will be deemed to have accepted and be bound by such Amended Terms. No such amendment by EOSullivan shall serve to constitute a default or termination by EOSullivan of this Agreement, nor shall such amendment serve to be a basis for Customer's termination of this Agreement. Except as otherwise provided in this Section 7.11, this Agreement may only be amended or modified, in whole or in part, by a written instrument signed by the parties to this Agreement.

Initials: *(Signature)*