

ORDINANCE NO. 2009-20

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BELLEFEUIL, SZUR & ASSOCIATES, INC. (BSA)—SOFTWARE LICENSE AGREEMENT

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor be hereby authorized and directed to execute an agreement with Bellefeuil, Szur & Associates, Inc. (BSA), in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof.

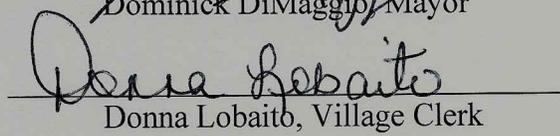
The foregoing Ordinance was adopted by the Village board of the Village of Hawthorn Woods, Illinois, on March 17, 2020:

AYES: Kaiser, Kesik, Russo, Corrigan, David

NAYS: Ø

ABSENT AND NOT VOTING: Ø

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

PASSED: March 17, 2020

APPROVED: March 17, 2020

PUBLISHED: March 17, 2020

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement that includes attached Exhibits ("Agreement") is between Bellefeuil, Szur & Associates, Inc. ("BSA"), a Michigan corporation and the Village of Hawthorn Woods, Lake County IL ("Customer"), effective the date of the signature of the last Party to sign the Agreement ("Effective Date"). Each party to the Agreement is referred to as a "Party" and the parties, collectively, are referred to as "Parties."

This Agreement sets the terms and conditions under which BSA will furnish certain licensed software and certain services described herein to Customer.

SECTION A – SOFTWARE LICENSE

1. License Grant.

1.1. Upon the Effective Date, subject to the terms of this Agreement and Customer's ongoing compliance therewith, BSA hereby grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to install and use the BSA Software Products for Customer's internal business purposes only (and not, for example, as a data center, reseller, or service bureau for third parties), only on servers owned by Customer and located at Customer's facilities, and otherwise in accordance with this Agreement. "BSA Software Product(s)" means, the: (i) BSA software products set forth in **Schedule 1 to Exhibit A**; (ii) related interfaces and customizations; (iii) BSA manuals, BSA official specifications, and BSA user guides provided in or with BSA software products set forth in **Schedule 1 to Exhibit A** ("Documentation"); and (iv) all modifications to the BSA software products set forth in **Schedule 1 to Exhibit A**, including, but not limited to, fixes, new versions, new releases, updates, upgrades, corrections, patches, work-arounds (collectively, "Modifications"). For the avoidance of doubt, Documentation does not include advertising, other general statements about products, or statements by sales or other staff members. Customer may make and keep (securely) one archival copy of each BSA Software Product solely for use as backup.

1.2. Customer will not sublicense, modify, adapt, translate, or otherwise transfer, reverse compile, disassemble or otherwise reverse engineer BSA Software Products or any portion thereof without prior written consent of the BSA. Without limiting the foregoing, the BSA Software Products may not be modified by anyone other than BSA. If Customer modifies the BSA Software Products without BSA's prior written consent, any BSA obligation to provide support services on, and the warranty for, the BSA Software Products will be void. All rights not expressly granted are reserved.

2. License Fees. Customer agrees to pay BSA, and BSA agrees to accept from Customer as payment in full for the license granted herein, the software fees set forth in **Schedule 1 to Exhibit A**.

3. Limited Software Warranty.

3.1. BSA warrants and represents for a period of one (1) year from the installation of BSA Software Product that: (i) such BSA Software Product will perform substantially in the same manner as official demonstration versions and in accordance with BSA's authorized online tutorials and videos that may have been made available as part of the sales and negotiation process leading up to this Agreement; and (ii) the BSA Software Product shall conform to the Documentation and be free of material defects in workmanship and materials. Any claim under this Limited Software Warranty must be made within one (1) year from the installation of the applicable BSA Software Product. Customer's exclusive remedy in the event of a breach of this warranty shall be to have BSA use reasonable efforts to repair or replace the non-conforming BSA Software Product so as to render it conforming to the warranty, or in the event that is not possible to render it conforming with reasonable efforts, to receive a refund of the amount paid for the BSA Software Product.

3.2. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING IN ANY WAY TO THE BSA SOFTWARE PRODUCTS, INCLUDING, *BUT NOT LIMITED TO*, THEIR FEATURES, ATTRIBUTES, FUNCTIONALITY, AND PERFORMANCE. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL SUCH REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. BSA DOES NOT REPRESENT OR WARRANT THAT THE BSA SOFTWARE PRODUCTS

WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE OPERATION OF THE BSA SOFTWARE PRODUCTS WILL OPERATE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL PROGRAMMING ERRORS IN THE BSA SOFTWARE PRODUCT(S) CAN BE FOUND IN ORDER TO BE CORRECTED.

4. Ownership of BSA Software Products/Proprietary Information.

4.1. BSA shall retain ownership of, including all intellectual property rights in and to, the BSA Software Products. Customer agrees not to challenge such rights and hereby assigns any and all copyrights and other intellectual property rights in and to the BSA Software Products to BSA and consents to execute any and all documents necessary to effect the purposes of this paragraph. Such consent shall not be unreasonably withheld, conditioned or delayed. "Intellectual property rights" means all trademarks, copyrights, patents, trade secrets, moral rights, know-how, and all other proprietary rights.

SECTION B – PROFESSIONAL SERVICES

5. Professional Services. BSA shall provide the services ("Professional Services") set forth in **Schedule 2 to Exhibit A**, for the prices indicated, provided Customer fulfills its obligations set forth in this Agreement. The Parties may enter into future Statements of Work, which shall become part of this Agreement.

6. Change Orders. If Customer requires the performance of professional services not covered by the existing Agreement, or requires a change to the existing Professional Services, Customer shall deliver to BSA's Project Manager a written change order and specify in such change order the proposed work with sufficient detail to enable BSA to evaluate it ("Change Order"). BSA may, at its discretion, prescribe the format of the Change Order. BSA shall provide the Customer with an evaluation of the Change Order, which may include a written proposal containing the following: (i) implementation plans; (ii) the timeframe for performance; and (iii) the estimated price for such performance. Upon execution, all Change Orders shall be governed by the terms and conditions of this Agreement, unless mutually agreed upon otherwise in writing. Customer acknowledges that such Change Orders may affect the implementation schedule and Go-Live Dates.

7. License and Ownership.

7.1. All rights, including all intellectual property rights, in and to work product delivered as a result of Professional Services under this Agreement shall be owned by BSA. For the avoidance of doubt, work product that constitutes a BSA Software Product or portion thereof shall be governed by Section A including Section 1.1 thereof.

7.2. Subject to Section 7.1 and Customer's compliance with this Agreement (including payment in full), BSA grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to use the work product and the intellectual property rights therein for Customer's internal business purposes only.

8. Cancellation. In the event Customer cancels or reschedules Professional Services, and without prejudice to BSA's other rights and remedies, Customer is liable to BSA for: (i) all expenses incurred by BSA on Customer's behalf; and (ii) daily fees associated with the canceled Professional Services (in accordance with the daily fee rate), if less than thirty (30) days advance notice is given regarding the need to cancel or reschedule and BSA cannot reasonably reassign its affected human resources to other projects where comparable skills are required.

9. Limited Professional Services Warranty.

9.1. BSA warrants that its Professional Services will be performed in a professional and workmanlike manner. In the event of a breach of the foregoing warranty and a claim in accordance with the next sentence, BSA's sole obligation and Customer's exclusive remedy with respect to such claim will be to have BSA re-perform the portion of the Professional Services with respect to which the warranty has been breached, to bring it into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by notice to BSA within thirty (30) days of performance of the portion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived.

9.2. THE FOREGOING LIMITED PROFESSIONAL SERVICES WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.

SECTION C – MAINTENANCE AND SUPPORT

10. Maintenance and Support Generally.

- 10.1.** For a one-year period, commencing on the installation of the BSA Software Products, and subject to Customer's compliance with the Agreement, BSA will provide, at no charge to Customer, "Maintenance and Support," meaning the following: (i) Modifications (such as patches, corrections, and updates) as are generally provided at no additional charge (beyond the cost of annual Maintenance and Support) by BSA to BSA customers; and (ii) technical support, as further described in Section 11, during BSA's normal business hours.
- 10.2.** Commencing one (1) year from the installation of the BSA Software Products, Maintenance and Support will be provided on an annual basis, subject to compliance with the terms of the Agreement and payment of the annual Maintenance and Support fees outlined in **Exhibit B**. Maintenance and Support will be renewed annually unless either Party notifies the other at least sixty (60) days prior to the anniversary of installation of its intent to terminate.
- 10.3.** BSA guarantees that the Maintenance and Support annual fee set forth in **Exhibit B** will not change for two (2) years from the date of the installation of the BSA Software Products. After that date, BSA reserves the right each year to increase the fee over the previous year if agreed upon between the parties hereto, by no more than an amount that is proportionate to the increase (measured from the beginning of such previous year) in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers – U.S. City Average (the "Annual Renewal Fee"). Rejection of such a fee increase shall be deemed as cancellation of the maintenance and support agreement.

11. Support.

- 11.1.** With respect to Errors following expiration of the Limited Software Warranty, BSA's sole obligation and Customer's sole remedy are set forth in this section 11. Subject to Customer's compliance with the terms of the Agreement and purchase of Maintenance and Support, BSA shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to Errors as set forth in **Exhibit C**. An "Error" means a verifiable and reproducible failure of a BSA Software Product to operate in accordance with the Documentation) under conditions of normal use and where the Error is directly attributable to the BSA Software Product as updated with current Modifications. If the customer modifies the BSA Software Products without BSA's written consent, BSA's obligation to provide support services on the BSA Software Products will be void.
- 11.2.** Support does not include the following: (i) installation or implementation of the BSA Software Products; (ii) onsite training/support, remote training, application design, and other consulting services; (iii) support of an operating system, hardware, or support outside of BSA's normal business hours; (iv) support or support time due to a cause external to the BSA Software Products adversely affecting their operability or serviceability, which shall include but not be limited to water, fire, wind, lightning, other natural calamities, transportation, misuse, abuse, or neglect; (v) repair of the BSA Software Products modified in any way other than modifications made by BSA or its agents; (vi) support of any other third-party vendors' software, such as operating system software, network software, database managers, word processors, etc.; and (vii) support of the BSA Software Products that have not incorporated current Modifications. All such excluded Maintenance and Support Services performed by BSA at Customer's request shall be invoiced to Customer on a time and materials basis, plus reasonable expenses associated therewith.
- 11.3.** Notwithstanding anything to the contrary, in order to maintain the integrity and proper operation of the Software, Customer agrees to use commercially reasonable efforts to implement, in the manner instructed by BSA, all Modifications in a timely manner. Customer's failure to implement any Modifications may limit or restrict the ability of Customer to implement future Modifications. Customer shall provide prompt notice of any Errors discovered by Customer, or otherwise brought to the attention of Customer. Proper notice may include, without limitation, prompt telephonic and written (either via e-mail or postal mail) notice to BSA of any purported Error. If requested by BSA, Customer agrees to provide written documentation of Errors to substantiate those Errors and to otherwise assist BSA in the detection and correction of said Errors. BSA will use its commercial reasonable judgment to determine if an Error exists.

- 11.4. Customer acknowledges and agrees that BSA and product vendors may require online access to the BSA's system in order for BSA to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate BSA's remote access to BSA's system. BSA shall provide remote connection software, which may require installation of a software component on a workstation or server computer.

SECTION D – GENERAL TERMS AND CONDITIONS

- 12. Customer Assistance.** Customer acknowledges that the implementation of the BSA Software Products is a cooperative process requiring time and resources of Customer personnel. Customer shall, and shall cause Customer personnel to, use all reasonable efforts to cooperate with and assist BSA as may be reasonably required to meet the project deadlines and other milestones agreed to by the Parties for implementation. BSA shall not be liable for failure to meet such deadlines and milestones when such failure is due to force majeure (as defined in Paragraph 26. below) or to the failure by Customer personnel to provide such cooperation and assistance (either through action or omission).
- 13. BSA Proprietary Information.**
- 13.1. Customer acknowledges that the information associated with or contained in the BSA Software Products and information used in the performance of Professional Services include trade secrets and other confidential and proprietary information of BSA (the "Proprietary Information").
- 13.2. The Customer shall maintain in confidence and not disclose Proprietary Information, directly or indirectly, to any third party without BSA's prior written consent. Customer shall safeguard the Proprietary Information to the same extent that it safeguards its own most confidential materials or data, but in no event shall the standard implemented be less than industry standard. Proprietary Information shall be used by Customer solely to fulfill its obligations under this Agreement. Customer shall limit its dissemination of such Proprietary Information to employees within the Customer's business organization who are directly involved with the performance of this Agreement and have a need to use such Proprietary Information. Customer shall be responsible for all disclosures by any person receiving Proprietary Information, by or through it, as if Customer itself disseminated such information.
- 13.3. Proprietary Information shall not include any information that: (a) is or becomes publicly known through no wrongful act or breach of any obligation of confidentiality by Customer; (b) was lawfully known to Customer prior to the time it was disclosed to or learned by Customer in connection with this Agreement, provided that such information is not known to Customer solely because of its prior business relationship with BSA; (c) was received by Customer from a third party that is not under an obligation of confidentiality to BSA; or (d) is independently developed by Customer for a party other than BSA without the use of any Proprietary Information. The following circumstances shall not cause Proprietary Information to fall within any of exceptions (a) through (d) above: (i) a portion of such Proprietary Information is embraced by more general information said to be in the public domain or previously known to, or subsequently disclosed to, the Customer; or (ii) it is a combination derivable from separate sources of public information, none of which discloses the combination itself, (e) is required to be disclosed by law or order.
- 13.4. If Customer is required, or anticipates that it will be required, to disclose any Confidential Information pursuant to a court order or to a government authority, Customer shall, at its earliest opportunity, provide written notice to BSA so as to give BSA a reasonable opportunity to secure a protective order or take other actions as appropriate. Customer shall at all times, cooperate with BSA so as to minimize any disclosure to the extent allowed by applicable law.
- 14. Limitation on Liability and Damages.** EXCEPT AS TO CLAIMS, DAMAGES OR LOSSES ARISING OUT OF (I) INTENTIONAL AND WILLFUL MISCONDUCT OR (II) FRAUD, BSA'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, OR LOSSES ARISING FROM THE BSA SOFTWARE PRODUCTS (INCLUDING BUT NOT LIMITED TO THEIR USE, OPERATION, AND/OR FAILURE TO OPERATE), PROFESSIONAL SERVICES, MAINTENANCE AND SUPPORT, ANY THIRD-PARTY PERFORMANCE OR LACK THEREOF, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE ABSOLUTELY LIMITED TO DIRECT DAMAGES NOT IN EXCESS OF THE GREATER OF: (I) \$189,730; OR, (II) THE AMOUNT OF INSURANCE PROCEEDS ACTUALLY AVAILABLE WITHOUT RESERVATION AT THE TIME OF SETTLEMENT OR JUDGMENT TO COVER THE CLAIM(S), DAMAGES OR LOSSES BY THE CUSTOMER UNDER INSURANCE PLACED OR PROVIDED PURSUANT TO THIS AGREEMENT. FOR AVOIDANCE OF DOUBT, AND WITHOUT LIMITING ANY OBLIGATION OF ANY INSURER, CUSTOMER SHALL NOT HAVE

RECOURSE AGAINST BSA FOR AMOUNTS UNFUNDED BY INSURANCE PROCEEDS IN EXCESS OF \$189,730. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, BSA SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR CONTINGENT DAMAGES OR EXPENSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, BSA SOFTWARE PRODUCTS, ANY THIRD-PARTY PERFORMANCE, OR LACK THEREOF, OR BSA'S PERFORMANCE, OR LACK THEREOF, UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUE, PROFIT, OR USE. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE LIMITATIONS SET FORTH HEREIN, THE LIABILITY AND DAMAGES SHALL BE LIMITED AND RESTRICTED TO THE EXTENT PERMITTED BY LAW.

14.1.

15. Customer is solely responsible for its data, its database, and for maintaining suitable back-ups of the data and database to prevent data loss in the event of any hardware or software malfunction. Customer covenants and agrees to undertake all necessary measures to protect and secure its data, including implementation of technical, administrative and physical protections. BSA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DATA LOSS REGARDLESS OF THE REASONS FOR SAID LOSS. To the maximum extent authorized by law, Customer agrees to defend, indemnify and hold BSA harmless for any claim by any person or entity arising out of any loss or compromise of data or data security or arising out of Customer's breach of this Agreement. For avoidance of doubt, Customer does not waive any statutory or governmental immunity as it relates to the security and protection of its data.
16. **Additional Disclaimer.** SUPPLIER PROVIDES NO WARRANTY FOR ANY THIRD-PARTY SOFTWARE AND/OR HARDWARE. EXCEPT AS SET FORTH IN THIS AGREEMENT, SUPPLIER WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY SOFTWARE, THIRD-PARTY SERVICES AND/OR HARDWARE.
17. **Indemnification for Intellectual Property Infringement.** If a claim is made or an action is brought alleging that a BSA Software Product infringes on a U.S. patent, or any copyright, trademark, trade secret or other proprietary right, BSA will defend Customer against such claim and will pay resulting costs and damages finally awarded, provided that: (a) Customer promptly notifies BSA in writing of the claim; (b) BSA has sole control of the defense and all related settlement negotiations; (c) Customer reasonably cooperates in such defense at no expense to BSA; and (d) Customer remains in compliance with the Agreement and has continued to purchase Maintenance and Support Services. The obligations of BSA under this Section are conditioned on Customer's agreement that if the applicable BSA Software Product, in whole or in part, or the use or operation thereof, becomes, or in the opinion of BSA is likely to become, the subject of such a claim, BSA may at its expense either procure the right for Customer to continue using the BSA Software Product or, at the option of BSA, replace or modify the same so that it becomes non-infringing (provided such replacement or modification maintains the same material functionality and does not adversely affect Customer's use of the Update as contemplated hereunder).
18. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of BSA and Customer. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.
19. **Termination.** Without prejudice to other rights and remedies, and except as otherwise provided in this Agreement, either Party may terminate this Agreement with written notice identifying with specificity the nature of the breach. Upon termination of this Agreement: (a) Customer shall promptly pay all amounts payable to BSA for Services rendered up to the date of termination; and (b) Customer shall return or destroy, at the direction of the BSA, BSA's Proprietary Information in its possession. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either Party existing under this Agreement at the time of termination. Sections 1.2, 4.1, 7.1, 13 through 16, 18, 20 through 29, and the provisions of this Agreement, which by their nature extend beyond the termination of this Agreement, will survive termination of the Agreement. No action arising out of this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
20. **Payment Terms.** Customer shall pay BSA for all amounts in accordance with this Agreement and **Exhibit A**.
21. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Illinois, without regard to its choice of law rules. BSA and the Customer agree that the exclusive venue for any legal or equitable action shall be the Courts of the County of Lake, State of Illinois, or in any court of the United States of America lying in the Northern District of Illinois.
22. **Entire Agreement.** This Agreement represents the entire agreement of Customer and BSA with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied,

or statutory. Customer hereby acknowledges that in entering into this Agreement, it did not rely on any information not explicitly set forth in this Agreement.

- 23. Export.** Customer will comply with all applicable laws, including applicable export control laws that prohibit export or diversion of certain products and technology to certain countries or individuals, including foreign nationals in the United States. Customer undertakes to determine any export licensing requirements and to comply with such obligations. The BSA Software Products are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software-Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display, or disclosure of BSA's Software Products by the U.S. Government shall be solely in accordance with the terms of this Agreement.
- 24. Severability.** If any term or provision of this Agreement, or the application thereof, to any extent, is held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.
- 25. Successors and Assigns.** This Agreement shall not be binding upon the successors, permitted assigns, representatives, and heirs of the Parties hereto unless previously agreed upon in writing prior to any transaction, following a request for such approval from the other party. For avoidance of doubt, any expanded use by Customer of the Program, for example, in the event of annexation or desired shared services, shall require the consent of BSA.
- 26. Force Majeure.** "Force Majeure" is defined as an event beyond the reasonable control of a Party, including governmental action, war, riot or civil commotion, fire, natural disaster, problematic weather, lack of availability of Customer provided technology, labor disputes, restraints affecting shipping or credit, delay of carriers or any other cause that could not, with reasonable diligence, be foreseen, controlled or prevented by the Party. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.
- 27. Notice.** All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (i) when delivered by hand; (ii) one (1) business day after being given to a nationally recognized overnight delivery service for next-business-day delivery, all fees prepaid; (iii) when sent by confirmed facsimile with a copy sent by another means specified in this provision; or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, *via* registered or certified mail, return receipt requested, postage prepaid, and in each case addressed as shall be set forth below. A Party may from time-to-time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

If to BSA:

BSA Software
14965 Abbey Lane
Bath, MI 48808
Attn: Contracts Manager
Telephone: 517-641-8900

If to Customer:

Village of Hawthorn Woods
2 Lagoon Drive
Hawthorn Woods, IL 60047
Telephone No.: 847-438-5500

28. Independent Contractor. This is not an agreement of partnership or employment of BSA or any of BSA's employees by Customer. BSA is an independent contractor for all purposes under this Agreement.

29. Contract Documents and Order of Precedence. The text of the Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules. This Agreement includes the following Exhibits and Schedules:

Exhibit A – Payment Terms Generally

Schedule 1 to Exhibit A - License/Interface/Customization Fees

Schedule 2 to Exhibit A – Professional Services Fees

Exhibit B – Maintenance and Support Fees

Exhibit C – Support Call Process

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

BSA SOFTWARE, INC.

By: _____

Name: _____

Title: _____

Date: _____

CUSTOMER

By: _____

Name: Dominick DiMaggio

Title: Mayor

Date: 3/17/2020

EXHIBIT A

Payment Terms

1. Customer shall pay BSA under the terms of the State of Illinois' Local Government Prompt Payment Act (Act). Payments not received within the set dates of the Act shall be subject to a one and one-half percent (1.5%) per month interest charge (or, if lower, the highest amount chargeable at law) assessed against the unpaid balance from the date due until the date payment is received.
2. Any amount not subject to good faith dispute and not paid within the terms of the Act shall, without prejudice to other rights and remedies, be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith will be deemed approved and accepted by Customer. For purposes of this Agreement, a good faith dispute regarding amounts owed exists only if Customer provides in writing at least ten (10) days prior to due date of payment on the invoice, notification of such dispute, the specific portion of the invoice in dispute, and the specific grounds of the dispute (which must be asserted in good faith), and Customer pays in timely fashion such portions that are not subject to such dispute.
3. BSA shall invoice Customer \$54,430 upon Effective Date for BSA's Project Management/Implementation Planning Fees and Data Conversion fees as set forth in Schedule 2.
4. BSA shall invoice Customer \$73,800 at start of On-Site Implementation and Training. Such amount equals BSA's software license fees as set forth in Schedule 1.
5. BSA shall invoice Customer \$82,815 at completion of On-Site Implementation and Training. Such amount equals On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
6. Customer shall be responsible for all taxes (including sales taxes) imposed as a result of any transaction associated with this Agreement, exclusive of taxes on BSA's net income.

Schedule 1 to Exhibit A

License Fees

Applications

Financial Management

General Ledger .NET	\$5,595
Accounts Payable .NET	\$4,745
Cash Receipting .NET	\$4,745
Miscellaneous Receivables .NET	\$4,745
Fixed Assets .NET	\$4,745
Purchase Order .NET	\$4,745
Work Orders .NET	\$4,745
Utility Billing .NET	\$2,995

Personnel Management

Payroll .NET	\$6,145
Human Resources .NET	\$5,595

Community Development

Building Department .NET	\$6,990
Business License .NET	\$3,915

Property

Animal License .NET	\$2,940
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BS&A Online

Community Development <i>Permit Application Feature - Enables contractors and the general public to submit permit applications online (A fee of \$2/application is accumulated and billed to the municipality).</i>	\$3,775
Employee Self-Service	\$3,690
Financials	\$3,690

Subtotal **\$73,800**

Schedule 2 to Exhibit A

Professional Services Fees

Data Conversions/Database Setup

Convert existing MSI data to BS&A format:

General Ledger (COA, Balances, Budget, Up to 10 Years Journal Transaction history.)	\$2,800
Accounts Payable (Vendors, Up to 10 years invoices and check history)	\$2,375
Payroll (Database Setup, Employee detail and YTD, Up to 10 years check history)	\$4,610
Building Department (Per Database)	\$5,940
Business Licensing (Per Database)	\$3,330

Database Setup:

Cash Receipting (Setup of Receipt Items/Tender Types)	\$1,500
Miscellaneous Receivables (Setup of Billing Items, Penalties)	\$1,500
Fixed Assets (Setup of Assets, Entry of Value, Accumulated Depreciation)	\$2,375
Work Orders (Setup of Work Order Types, Facilities, Assets, Equipment, Materials, Workers (if not using Employees as Workers))	\$2,000
Human Resources (Setup of Licenses, Certifications, Benefit Plans, Positions. Not assigned to Employees)	\$3,000

Subtotal \$29,430

No conversion or database setup to be performed for:

- Purchase Orders
- Utility Billing
- Animal Licensing

Custom Import

Custom import from third-party software to populate Building Department database with parcels, properties, and current owners.	\$1,500
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Project Management and Implementation Planning

Services include:

- Analyzing customer processes to ensure all critical components are addressed.
- Creating and managing the project schedule in accordance with the customer's existing processes and needs.
- Planning and scheduling training around any planned process changes included in the project plan.
- Modifying the project schedule as needed to accommodate any changes to the scope and requirements of the project that are discovered.
- Providing a central contact between the customer's project leaders, developers, trainers, IT staff, conversion staff, and other resources required throughout the transition period.
- Installing the software and providing IT consultation for network, server, and workstation configuration and requirements.
- Reviewing and addressing the specifications for needed customizations to meet customer needs (when applicable).

\$25,000

Implementation and Training

- \$1,000/day
- Days quoted are estimates; you are billed for actual days used

Services include:

- Setting up users and user security rights for each application
- Performing final process and procedure review
- Configuring custom settings in each application to fit the needs of the customer
- Setting up application integration and workflow methods
- Onsite verification of converted data for balancing and auditing purposes
- Training and Go-Live

Software Setup	Days:	5		\$5,000
Financial Management Applications	Days:	26		\$26,000
Personnel Management Applications	Days:	16		\$16,000
Community Development Applications	Days:	11		\$11,000
Property Applications	Days:	2		\$2,000
	Total:	60	Subtotal	\$60,000

Travel Expenses

\$21,315

EXHIBIT B

Maintenance and Support Fees

Annual Service Fees

Unlimited support during your first year with the program is included in your purchase price. Thereafter, Service Fees are billed annually. After two (2) years, BS&A Software reserves the right to increase the Annual Service Fee by no more than the yearly Consumers Price Index (CPI).

Financial Management	
General Ledger .NET	\$1,120
Accounts Payable .NET	\$950
Cash Receipting .NET	\$950
Miscellaneous Receivables .NET	\$950
Fixed Assets .NET	\$950
Purchase Order .NET	\$950
Work Orders .NET	\$950
Utility Billing .NET	\$600
Personnel Management	
Payroll .NET	\$1,230
Human Resources .NET	\$1,120
Community Development	
Building Department .NET	\$1,400
Business License .NET	\$785
Property	
Animal License .NET	\$590
BS&A Online	
Community Development	\$755
Financials	\$740
Employee Self-Service	\$740
Total Annual Service Fees	\$14,780

EXHIBIT C

Support Call Process

BSA's standard hours for telephone support are from 8:30 a.m. to 6:00 p.m. (EST), Monday through Friday, excluding holidays.

You can lodge a support request in three ways: (i) **Contact Customer Support** option located within the Help menu of all of our applications (ii) our toll-free support line (1-855-BSA-SOFT) or via email.

BSA targets less than thirty (30) minutes for initial response ("Initial Response Target").

Customer service requests fall into four main categories:

- A. Technical.** Questions or usage issues relating to I.T. functionality, future hardware purchases, and configuration. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- B. Questions/Support.** General questions regarding functionality, use, and set-up of the applications. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- C. Requests.** Customer requests for future enhancements to the applications. Key product management personnel meet with development staff on a regular basis to discuss the desirability and priority of such requests. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- D. Issues/Bugs.** Errors fall into three (3) subcategories:
 - i. Critical.** Cases where an Error has rendered the application or a material component unusable or not usable without substantial inconvenience causing material and detrimental consequences to business -- with no viable Customer workaround or alternative. The targeted resolution time for critical issues is less than one (1) day.
 - ii. Moderate.** Cases where an Error causes inconvenience and added burden, but the application is still usable by Customer. The targeted resolution time for all moderate issues is within two (2) weeks, which is within our standard update cycle.
 - iii. Minimal.** Cases that are mostly cosmetic in nature, and do not impede functionality in any significant way. These issues are assigned a priority level at our regular meetings, and resolution times are based on the specified priority.

Remote Support Process

Some support calls may require further analysis of Customer's database or set-up to diagnose a problem or to assist Customer with a question. BSA's remote support tools share Customer's desktop *via* the Internet to provide Customer with virtual on-site support. BSA's support team is able to quickly connect remotely to Customer's desktop and view its setup, diagnose problems, or assist Customer with screen navigation.