


 COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT

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MEMORANDUM

Date: January 7, 2021

To: Michael G. Bartholomew, MCP, LEED-AP, City Manager

From: Michael McMahon, Community and Economic Development Director *mm*

Subject: Backflow Solutions, Inc. Professional Service Agreement

Issue: The State of Illinois Cross-Connection Control Program is one of several tools intended to protect the public water supply. The *Illinois Environmental Protection Act* and 35 Ill. Adm. Code 607.104 grants the *Illinois Environmental Protection Agency* (IEPA) authority to develop and modify agency regulations regarding cross-connection (backflow) devices. The IEPA requires local water supply officials to protect their water mains from connections that have the potential to allow the backflow of contaminants into their respective distribution systems.

Analysis: In accordance with Title 9, Chapter 4 of the City of Des Plaines Municipal Code and the IEPA, the Community and Economic Development Department (CED) manages the City's backflow device program, which requires that each backflow device (private or public) must be tested annually, and those results collected and maintained by the City. In 2020, there were 2,845 backflow devices within City limits.

Each month, CED staff mails between 100-200 notices and/or administrative fee invoices to property owners who have backflow device for irrigation systems or fire sprinklers, etc. The invoice notifies property owners of the requirement to have a certified cross-connection plumber test each device and provide the results and the administrative fee to the City. If the backflow device fails, adequate repairs must be made and the device re-tested.

If a report is not submitted or the Backflow Administrative Fee of \$10 is not remitted, delinquent invoices and/or notices are issued. If a report is not remitted or if compliance is not met within 60 days, a citation is issued. The overall process to manage this program is labor intensive, with staff dedicating up to 10 hours per week on the Backflow Program preparing notices, processing payments, answering questions and filing reports.

In early 2020, CED began researching ideas on how to reduce staff time and the overall expense of the program. Staff identified Backflow Solutions, Inc. (BSI), an organization that manages municipal backflow programs working directly with local certified cross-connection plumbers.

BSI is a full service backflow management firm headquartered in Alsip, IL with offices throughout North America. They have 25+ years of experience in administrating municipal backflow programs with over 150

municipal clients including Mt. Prospect, Niles, Evanston, Glenview and Skokie.

Staff began discussions with BSI this past summer and followed up with several of their municipal clients. Staff received several positive reviews and was told that the process is seamless and reduced staff time.

Through BSI, property owners hire a certified plumber to perform the test. The plumber is responsible for uploading the results to the BSI Online portal whereby City staff can access and manage the data. An administrative fee is charged to the property owner through the contractor and property owners no longer have direct contact with municipal staff.

Staff was satisfied with the services provided by BSI, and a professional service agreement was prepared (Exhibit A). The draft agreement includes the following:

- BSI will be responsible for maintaining a secured online database and tracking system for all backflow reports.
- BSI will send up to four notices annually to each backflow customer. All mailing materials and postage are included in the service.
- The initial “Test Due Notice” will be mailed approximately 30 days prior to the scheduled test date.
- There will be an annual fee to the City of \$1,090.
- Each backflow account in Des Plaines will be charged a \$14.95 Data Entry Fee plus any City fees.
- BSI will verify all pertinent credentials of the testing companies.
- BSI provides unlimited customer service to backflow device customers and testing companies via a toll-free number and email address.
- The City will be assigned their own personal contact within BSI, who will be available to answer any questions and to assist with reports, notifications, or any customer service issue.
- The Agreement can be cancelled for any reason with 30 days notice.

Currently, the City charges its backflow device customers a \$10 administrative fee. Based on the reduction of City staff hours required to maintain the program, Staff recommends an administrative fee reduction making the new administrative fee \$5.00 for each test performed. BSI will collect the fee and remit to the City minus 5% administrative processing fee.

However, because the overall fee to the backflow device customer would potentially be \$19.95 (BSI Data Entry Fee plus the City Administrative Fee), the City General Council determined that is essentially a fee increase. Thus, the City Council would have to approve a fee adjustment to formalize the additional third-party administrative fee. An ordinance to amend Sec. 10-13-3 Construction Regulations Fee Schedule has been prepared and will be next on the City Council Agenda for consideration. Please see Attachment 1 that shows a number of BSI municipal clients and the fees charged to its backflow device customers.

Based on the City’s Purchasing Policy and the annual fee the City would be charged (\$1,090), it has been determined that the City can forgo a formal procurement search and utilize the Flexible Purchasing option. It states any procurement for services less than \$2,500 can be awarded utilizing a method determined by the Department Head to be the most effective means and value for the City.

Recommendation: I recommend the City Council waive bidding requirements and approve Resolution R-19-21 approving a Professional Service Agreement with Backflow Solutions, Inc.

Attachment:
Resolution R-19-21

Exhibit A: Professional Services Agreement
Attachment 1: BSI Illinois Customer Filing Fees

CITY OF DES PLAINES

RESOLUTION R - 19 - 21

A RESOLUTION APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH BACKFLOW SOLUTIONS, INC. FOR ADMINISTRATIVE SERVICES FOR THE CITY'S BACKFLOW TESTING PROGRAM.

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

WHEREAS, pursuant to Title 9, Chapter 4 of the City of Des Plaines Municipal Code, each owner of a cross-connection or backflow device (collectively, "***Backflow Devices***") must annually test each device to insure it is operating properly and report those test results to the City; and

WHEREAS, there are currently 2,843 Backflow Devices operating with the City; and

WHEREAS, the Community and Economic Development Department is responsible for administering the City's Backflow Device program; and

WHEREAS, City staff determined that the most effective and efficient means of administering the City's Backflow Device program is to engage a firm to work directly with certified plumbers and property owners to send required inspection notices and track completed inspections (collectively, "***Backflow Inspection Services***"); and

WHEREAS, the City requested a proposal from Backflow Solutions, Inc. ("***Contractor***") for the performance of the Backflow Inspection Services; and

WHEREAS, the City desires to enter into a one-year professional service agreement ("***Agreement***") with Contractor for the performance of the Backflow Inspection Services in the not-to-exceed amount of \$1,090; and

WHEREAS, pursuant to the Agreement, Contract will charge customers an administrative fee of \$14.95 per backflow device inspection; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Agreement with Contractor;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

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

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the final Agreement only after receipt by the City Clerk of at least two executed copies of the Agreement from Contractor; provided, however, that if the City Clerk does not receive such executed copies of the Agreement from Contractor within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Agreement shall, at the option of the City Council, be null and void.

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

PASSED this ___ day of _____, 2021.

APPROVED this ___ day of _____, 2021.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

**CITY OF DES PLAINES
PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** ("**Agreement**") is dated as of the ____ day of _____, _____, and is by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation ("**City**"), and the Consultant identified in Section 1.A of this Agreement.

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the City's statutory and home rule powers, the parties agree as follows:

SECTION 1. CONSULTANT.

A. Engagement of Consultant. The City desires to engage the Consultant identified below to perform and to provide all necessary professional consulting services to perform the work in connection with the project identified below:

Consultant Name ("Consultant**"):** **Backflow Solutions, Inc.**

Address: **12609 S. Laramie Ave., Alsip, Illinois 60803**

Telephone No.: **800-414-4990**

Email:
bsionline@backflow.com

B. Project Description. Consultant will manage and track the performance of backflow inspections on properties within the City and send required notices as necessary, as more fully described in the Scope of Work attached to this Agreement as **Exhibit A ("**Scope of Work**")**.

C. Representations of Consultant. The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the consulting services that are set forth in the Proposal ("**Services**") in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

SECTION 2. SCOPE OF SERVICES.

A. Retention of the Consultant. The City retains the Consultant to perform, and the Consultant agrees to perform, the Services.

B. Services. The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

C. Commencement; Term. The Consultant shall commence the Services on January 1, 2021 ("**Commencement Date**"). This Agreement shall be for successive one-year terms that automatically renew upon the expiration of the then current term ("**Term**") unless terminated in accordance with this Agreement.

D. Reporting. The Consultant shall regularly report to the City Manager, or his designee, regarding the progress of the Services during the term of this Agreement.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. Agreement Amount. The total amount paid by the City for the Services pursuant to this Agreement shall not exceed the amount identified in the Scope of Work. No claim for additional compensation shall be valid unless made in accordance with Sections 3.D or 3.E of this Agreement.

B. Invoices and Payment. The Consultant shall submit invoices in an approved format to the City for costs incurred by the Consultant in performing the Services. The amount billed in each invoice for the Services shall be based solely upon the rates set forth in the Scope of Work. The City shall pay to the Consultant the amount billed within 60 days after receiving such an invoice.

C. Records. The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the City to inspect and audit all data and records of the Consultant for work done pursuant to this Agreement. The records shall be made available to the City at reasonable times during the term of this Agreement, and for one year after the termination of this Agreement.

D. Claim In Addition To Agreement Amount.

1. The Consultant shall provide written notice to the City of any claim for additional compensation as a result of action taken by the City, within 15 days after the occurrence of such action.

2. The Consultant acknowledges and agrees that: (a) the provision of written notice pursuant to Section 3.D.1 of this Agreement shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and (b) any changes in the Agreement Amount shall be valid only upon written amendment pursuant to Section 8.A of this Agreement.

3. Regardless of the decision of the City relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement, as determined by the City, without interruption.

E. Additional Services. The Consultant acknowledges and agrees that the City shall not be liable for any costs incurred by the Consultant in connection with any services provided by the Consultant that are outside the scope of this Agreement ("**Additional Services**"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City.

F. Taxes, Benefits, and Royalties. Each payment by the City to the Consultant includes all applicable federal, state, and City taxes of every kind and nature applicable to the Services, as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits, and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or rights to claim additional compensation by reason of the payment of any such tax, contribution, premium, cost, royalty, or fee are hereby waived and released by the Consultant.

G. Final Acceptance. The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the City of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

SECTION 4. SUBCONTRACTORS. The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the City in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

A. Removal of Subcontractors. If any subcontractor fails to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional practices, the Consultant shall immediately upon notice from the City remove and replace such subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "***Confidential Information***" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of such information to the Consultant pursuant to this Agreement ("***Time of Disclosure***"); (2) to have been in the

public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (4) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 6. STANDARD OF SERVICES AND INDEMNIFICATION.

A. Representation and Certification of Services. The Consultant represents and certifies that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

B. Indemnification. The Consultant shall, and does hereby agree to, indemnify, save harmless, and defend the City against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in Section 6.A of this Agreement.

C. Insurance. The Consultant shall provide, at its sole cost and expense, liability insurance in the aggregate amount of \$1,000,000, which insurance shall include, without limitation, protection for all activities associated with the Services. The insurance shall be for a minimum of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. The Consultant shall cause the City to be named as an additional insured on the insurance policy described in this Section 6.C. Not later than 10 days after the Commencement Date, the Consultant shall provide the City with either: (a) a copy of the entire insurance policy; or (b) a Certificate of Insurance along with a letter from the broker issuing the insurance policy to the effect that the Certificate accurately reflects the contents of the insurance policy. The insurance coverages and limits set forth in this Section 6.C shall be deemed to be minimum coverages and limits, and shall not be construed in any way as a limitation on the Consultant's duty to carry

adequate insurance or on the Consultant's liability for losses or damages under this Agreement.

D. No Personal Liability. No elected or appointed official or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A. Relationship of the Parties. The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed: (1) to create the relationship of principal and agent, employer and employee, partners, or joint ventures between the City and Consultant; or (2) to create any relationship between the City and any subcontractor of the Consultant.

B. Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge: (1) no elected or appointed City official, employee or agent has a personal financial interest in the business of the Consultant or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement, neither Consultant nor any person employed or associated with Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Consultant nor any person employed by or associated with Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon 15 days written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to

termination, not exceeding the value of the Services completed, which shall be determined on the basis of the rates set forth in the Proposal.

E. Compliance With Laws and Grants.

1. Compliance with Laws. The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including, without limitation: any applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all conditions of any federal, state, or local grant received by the City or the Consultant with respect to this Agreement or the Services. Further, the Consultant shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.

2. Liability for Noncompliance. The Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Consultant's, or any of its subcontractors, performance of, or failure to perform, the Services or any part thereof.

3. Required Provisions. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

F. Default. If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("***Event of Default***"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the City, then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Consultant. The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. Termination of Agreement by City. The City may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. Withholding of Payment by City. The City may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

G. No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

H. City Council Authority. Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to, vendors shall be subject to the approval of the City Council. For purposes of this Section 7.H, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Consultant without the knowledge and approval of the City Council.

I. Mutual Cooperation. The City agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the City may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the City in the performance and completion of the Services and with any other consultants engaged by the City.

J. News Releases. The Consultant shall not issue any news releases, advertisements, or other public statements regarding the Services without the prior written consent of the City Manager.

K. Ownership. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received from the City by the Consultant in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

L. GIS Data. The City has developed digital map information through Geographic Information Systems Technology ("**GIS Data**") concerning the real property located within the City. If requested to do so by the Consultant, the City agrees to supply the Consultant with a digital copy of the GIS Data, subject to the following conditions:

1. Limited Access to GIS Data. The GIS Data provided by the City shall be limited to the scope of the Services that the Consultant is to provide for the City;

2. Purpose of GIS Data. The Consultant shall limit its use of the GIS Data to its intended purpose of furtherance of the Services; and

3. Agreement with Respect to GIS Data. The Consultant does hereby acknowledge and agree that:

a. Trade Secrets of the City. The GIS Data constitutes proprietary materials and trade secrets of the City, and shall remain the property of the City;

b. Consent of City Required. The Consultant will not provide or make available the GIS Data in any form to anyone without the prior written consent of the City Manager;

c. Supply to City. At the request of the City, the Consultant shall supply the City with any and all information that may have been developed by the Consultant based on the GIS Data;

d. No Guarantee of Accuracy. The City makes no guarantee as to the accuracy, completeness, or suitability of the GIS Data in regard to the Consultant's intended use thereof; and

e. Discontinuation of Use. At such time as the Services have been completed to the satisfaction of the City, the Consultant shall cease its use of the GIS Data for any purpose whatsoever, and remove the GIS Data from all of the Consultant's databases, files, and records; and, upon request, an authorized representative of the City shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify compliance by the Consultant with this Section 7.L.3.e.

SECTION 8. GENERAL PROVISIONS.

A. Amendment. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the City and the Consultant in accordance with all applicable statutory procedures.

B. Assignment. This Agreement may not be assigned by the City or by the Consultant without the prior written consent of the other party.

C. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the City, the Consultant, and their agents, successors, and assigns.

D. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S.

Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.D, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Des Plaines
1420 Miner Street
Des Plaines, Illinois 60016
Attention: City Manager

With a copy to:

Elrod Friedman LLP
325 N. LaSalle St., Ste 450
Chicago, Illinois 60654
Attention: Peter M. Friedman

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Backflow Solutions, Inc.
12609 S. Laramie Ave.
Alsip, Illinois 60803
Attention: Lauren Bolek

With a copy to:

E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the City.

F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

G. Time. Time is of the essence in the performance of all terms and provisions of this Agreement.

H. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

I. Governing Laws. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

J. Authority to Execute.

1. The City. The City hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. The Consultant. The Consultant hereby warrants and represents to the City that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

K. Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

L. Waiver. Neither the City nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the City or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the City's or the Consultant's right to enforce such rights or any other rights.

M. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

N. Grammatical Usage and Construction. In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

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

P. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

Q. Exhibits. Exhibit A attached to this Agreement is, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between Exhibit A and the text of this Agreement, the text of this Agreement shall control.

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

S. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 20__.

ATTEST:

CITY OF DES PLAINES

By: _____
City Clerk

By: _____
City Manager

ATTEST:

BACKFLOW SOLUTIONS, INC.

By: _____

By: _____

Title: _____

Its: _____

SCOPE OF WORK

1. **BSI Responsibilities.** In addition to any other responsibilities set forth elsewhere in this agreement, BSI shall, through the use of its proprietary software, BSI Online.
 - a. Maintain the secure Online Database to ensure a functional backflow assembly tracking system that is easy to understand and use by licensed testers. BSI shall also maintain an internet website where testers shall input all data related to Backflow Tests that they conduct within the City's jurisdiction.
 - b. Send up to **four (4)** notices including Initial, Overdue, Final, and Failed to water customers that have Assemblies, advising them that their Assembly is due for testing. The initial "Test Due Notice" shall be mailed approximately 30 days prior to the scheduled test date. The second notice (the "Overdue Notice") shall be sent after the Test Date has passed if Backflow Test results have not been entered to the Online Database. The Overdue Notice will advise the water customer of its delinquent test status. The third notice (the "Final Notice") will be sent at the time frame determined by the City and will include language congruent with your ordinance. The "Failed Notice" will be mailed one day after failed test results have been entered to the Online Database. BSI shall immediately transmit an electronic copy of each Test Report to the City. To facilitate the testing procedure, the Test Due Notice will include the identity of the water customer's last Tester of record, together with all relevant contact information, provided that information is available to BSI. At the time the Test Due Notice is mailed to the water customer, BSI will also transmit a notice to the last Tester of record advising that Tester that the water customer's assembly is due to be tested. The Tester Notification is designed to increase test compliance, thereby reducing enforcement costs incurred by the City of Des Plaines.
2. **Inducement.** The City acknowledges and agrees in order to induce BSI to provide the service contemplated by this Agreement, for each Test Report submitted to the Online Database the Data Entry Charge \$14.95 per report shall be paid (by the "tester") prior to uploading the test data to the Online Database. Additional funds added to the \$14.95 will be rebated directly back to the municipality monthly, less 5% processing fees.
3. **Cost.** City shall pay BSI the sum of \$495.00 per calendar year as the annual "Subscription Fee". Annual cost for Final Notice is \$400.00 and Failed Notice is \$195.00. Total cost to be billed to the City is \$1,090.00 Annually.
4. **Data Transition.** BSI will handle the initial data cleanse and reconciliation, ensuring the information is the most up to date being imported into the BSI system.
5. **Archival History of Letters.** BSI is extremely transparent. In our Letters Feature, you can see all notifications generated and sent by our program. They are time stamped under each property address in the system.
6. **Real-Time Reporting.** BSI Online provides real-time data and reports. All information is available to you from your dashboard 24/7/365. We provide you with the functionality to export any report from the system. This data can be manipulated, filtered, and sorted any way you need. In our reporting tab, we have pre-populated queried reports, such as your monthly EPA report you can click and export. If you need any additional information, our program allows you the ability to create and customize an unlimited number of reports.
7. **Program Users.** BSI Online provides the City unfettered access to data and can have an unlimited number of simultaneous users, in addition to multiple users. BSI allows each user to have different roles and permissions; the information and permissions can be allowed or restricted based on the City and employee's needs.
8. **Online Test Submittal.** To enter a test online, the backflow tester will need to obtain their customer's confirmation number (CCN) from their notification letter. This CCN keeps your information safe and secure, not allowing testing companies to "surf" for information. All reports are electronic, easy to read and are emailed to

the contractor in real-time as a PDF document. All device test report forms are customizable. We can add additional fields at the City's request, such as meter number or unique service ID.

9. **Validation of Test Results**. BSI will set up each form in the system to pre-populate based on Illinois state standards per device type. BSI Online automatically computes if a test fails based on the report entered by the tester and notifies both the tester and City. Pass/fail standards are constructed specific to the City of Des Plaines and Illinois State standards. Upon submission, a copy of the test is sent via email to the City and the City's database is updated in real-time.

10. **Validation of Testers Licenses/Test Gauge Calibrations**. During the startup process, BSI verifies with the City all pertinent credentials being monitored for both testers and testing companies. Part of the registration process with BSI is providing a copy of all tester licenses and annual test kit calibrations. BSI Online tracks the expiration date of these credentials, turning from green to red the closer a credential is to expiration. Once red, the tester/test kit is locked out from entering tests until an updated copy is uploaded into the BSI Online system or sent to our office for vetting. This proactive approach is integral to the integrity of your program.

11. **Archival History of Test Reports**. After submission, BSI stores copies of the test on the tester side and City side of the BSI program. We do not purge data; therefore, the City will always have access to data entered for their water system. Testers can review any test data they have submitted in the system. It is always available on their side of the program to archive, review and print.

12. **Customer Service & Support**. The City will be assigned their own personal contacts within BSI, who will be there to answer any questions or concerns about the program, reports, notifications, or customer service for the life of the contract. We also provide full customer service and technical support to your water customers and backflow testers via a toll-free number and email address. Our well-trained staff is available to answer questions, lifting the burden off your staff. The City can be assured of speaking with a live customer service representative and not an answering service or voicemail machine.

13. **Web Portal for Water Customers**. The water customer is an integral part of your backflow tracking program. Our job is to make sure all information regarding the testing and inspection requirements are properly conveyed and be available to answer any questions they may have. On all notifications to water customers, they have a unique identifier, a Customer Confirmation Number or CCN, on the top right corner of their notifications. This unique identifier is what the water customer provides to the contractor to submit the results online securely. Such a unique identifier provides layers of security for your water customers, as it prevents data mining of the program and protects confidential customer information, such as an address. The customer can use their CCN to look up a list of local, certified backflow testers on our website who meet the criteria set by the City. We do not promote any one company; the list is randomly generated by the system each time a CCN is entered.

14. **IT Support**. Our in-house IT staff is always available to identify and resolve any issues that may arise. Since our IT staff is internal, we have continuous access to their knowledge and expertise. We can easily troubleshoot any issue within the program and start working on a resolution immediately.

15. **Support Log and Metrics**. Our system is built on the foundation of accountability and transparency. All transactions are time stamped with usernames. Each interaction with your backflow program is fully auditable and accessible to you. The City can monitor and stay up to date with any issues, comments, or concerns.

16. **System Reliability & Security**. BSI believes security of your data and information is of utmost importance, which is why our servers are backed up multiple times a day and hosted by Amazon Web Services (AWS), providing the City with assurance their data will always be protected but accessible. All municipal/testing company information is protected via login credentials, and water customers must use their Customer Confirmation Number (CCN) to access their reports and find a testing company. No one should be able to data mine for information.

ILLINOIS COMMUNITIES

Organization	Program Start Date	Total Filing Fee	Population
City of Aurora	1/1/2010	\$ 16.95	199,602
Village of Bellwood	1/15/2014	\$ 14.95	18,839
Village of Bensenville	7/15/2011	\$ 14.95	18,226
Village of Brookfield	6/1/2010	\$ 21.95	18,858
Village of Buffalo Grove	5/1/2016	\$ 14.95	40,853
Village of Burr Ridge	4/1/2012	\$ 14.95	10,801
Village of Calumet Park - Commercial	1/1/2016	\$ 27.90	7,672
Village of Carol Stream	1/1/2013	\$ 14.95	39,601
Village of Deerfield	8/15/2013	\$ 14.95	18,779
Village of Downers Grove	3/1/2010	\$ 14.95	49,387
City of Elmhurst	7/1/2015	\$ 14.95	46,558
City of Evanston	4/1/2020	No Fee	74,106
Village of Forest Park	10/15/2016	\$ 14.95	13,807
Village of Franklin Park	2/1/2013	\$ 14.95	17,808
Village of Glencoe	1/15/2016	\$ 14.95	8,869
Village of Glendale Heights	9/1/2012	\$ 17.45	33,928
Village of Glenview	10/1/2012	No Fee	47,258
Village of Grayslake	4/1/2016	\$ 14.95	20,903
Village of Gurnee	8/1/2013	\$ 14.95	30,576
City of Harvey	12/1/2012	\$ 19.95	24,641
Village of Harwood Heights	11/1/2013	No Fee	8,413
Village of Hazel Crest	9/1/2012	\$ 16.95	13,694
Village of Hinsdale	5/15/2012	\$ 14.95	17,652
Village of Itasca	7/1/2011	\$ 19.95	9,867
City of Joliet	9/1/2010	\$ 19.95	148,099
Village of Kenilworth	4/15/2010	\$ 17.95	2,494
Village of La Grange Park	3/15/2019	\$ 12.95	13,296
Village of Lansing	8/15/2013	\$ 14.95	27,657
Leyden Township	3/1/2018	\$ 12.95	90,771
Village of Lincolnwood	11/1/2010	\$ 14.95	12,349
Village of Lisle	1/15/2015	\$ 14.95	23,394
City of Markham	9/1/2012	\$ 16.95	12,418
Village of Melrose Park	3/15/2010	\$ 24.95	24,925
City of Monmouth	7/15/2017	\$ 17.00	8,998
Village of Mount Prospect	5/15/2020	\$ 12.95	54,198
Village of Mundelein	3/15/2020	\$ 12.95	31,234

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Village of Niles	2/1/2018	\$ 12.95	29,184
Village of Norridge	3/1/2010	\$ 19.95	14,281
Village of North Aurora	6/1/2012	\$ 14.95	18,124
City of North Chicago	9/1/2012	\$ 14.95	29,770
North Park Public Water District	6/1/2012	\$ 16.95	35,200
Village of Northbrook	5/1/2020	No fee	33,167
Village of Northfield	12/1/2013	\$ 14.95	5,536
Village of Oak Brook	3/15/2011	\$ 14.95	8,074
Village of Oak Lawn	2/1/2013	\$ 17.00	55,511
Village of Orland Park	12/1/2009	\$ 14.95	58,312
Village of Palatine	2/1/2013	\$ 14.95	68,053
City of Palos Heights	2/1/2012	\$ 19.95	12,626
City of Prospect Heights	9/1/2014	\$ 14.95	16,014
Village of River Forest	4/1/2014	\$ 14.95	10,903
Village of River Grove	8/15/2017	\$ 24.95	9,979
Village of Riverwoods	5/1/2015	\$ 14.95	3,595
City of Rockford	7/1/2016	\$ 14.95	147,881
City of Rolling Meadows	4/15/2017	\$ 14.95	23,748
Village of Schaumburg	8/1/2012	\$ 14.95	73,509
Village of Schiller Park	7/15/2014	\$ 22.00	11,515
Village of Skokie	12/1/2013	\$ 14.95	63,280
Village of South Elgin	11/1/2013	No Fee	23,447
Village of South Holland	7/15/2015	\$ 15.95	21,503
Village of Tinley Park	10/1/2018	\$ 10.00	56,204
Village of Villa Park	9/15/2013	No Fee	21,695
Village of Wauconda	10/15/2017	\$ 14.95	13,620
City of Waukegan	7/15/2016	\$ 14.95	86,792
Justice-Willow Springs Water Commission	4/1/2010	\$ 19.95	19,640
Village of Westmont	7/15/2011	\$ 16.95	24,647
Village of Wheeling	4/15/2014	\$ 14.95	38,878
Village of Wilmette	4/15/2015	\$ 14.95	27,265
City of Wood Dale	4/1/2015	\$ 14.95	13,717
Village of Woodridge	1/15/2011	\$ 15.00	33,566

BSI Online standard filing fee is \$14.95 per report, charged to the backflow tester/contractor. A filing fee above this amount indicates that the Municipality receives the additional funds in the form of a rebate from BSI.

"No Fee" indicates that the Municipality pays the filing fee directly and the tester is not charged to submit reports.

Total filing fees below our standard price indicate either: 1.) The Municipality was under contract to hold that price for a certain period. 2.) The Municipality opted to pay a portion of the filing fee directly to BSI.

BSI partners with over 500 water systems, including over 140 in Illinois alone. All information is current as of December 22, 2020.