

RESOLUTION NO.  
R58-2010

A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A CERTAIN AGREEMENT FOR SERVICES BETWEEN THE VILLAGE OF WOODRIDGE AND BACKFLOW SOLUTIONS, INC.

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois, a home rule municipality in the exercise of its home rule powers, that the Mayor and Village Clerk be and the same are hereby authorized to execute an agreement for services between the Village of Woodridge, Illinois and Backflow Solutions, Inc. a copy of which is attached hereto as "Exhibit 1", which is by this reference expressly incorporated herein, subject to the approval of the Village Attorney.

BE IT FURTHER RESOLVED that the Village Clerk of the Village of Woodridge forward a certified copy of this Resolution to Backflow Solutions, Inc.; 12609 South Laramie Avenue, Alsip, IL 60803; Attention: Mr. Doug Eisenhauer with a copy to the Director of Public Works.

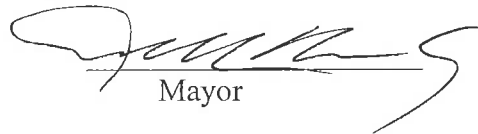
ADOPTED this 16<sup>th</sup> day of December, 2010.

|                          |            |                   |            |
|--------------------------|------------|-------------------|------------|
| Trustee Banks            | <u>Aye</u> | Trustee Kagann    | <u>Aye</u> |
| Trustee Beavers          | <u>Aye</u> | Trustee McManus   | <u>Aye</u> |
| Trustee Cunningham-Picek | <u>Aye</u> | Trustee Pittinger | <u>Aye</u> |

Mayor Murphy

—

APPROVED this 16<sup>th</sup> day of December, 2010.

  
Mayor

ATTEST:

  
Village Clerk

Filed in the office of the Village Clerk and published in pamphlet form by authority of the Mayor and Board of Trustees of the Village of Woodridge, DuPage, Will and Cook Counties, Illinois this 16<sup>th</sup> day of December, 2010.

  
Village Clerk

AGREEMENT FOR SERVICES BETWEEN THE VILLAGE OF WOODRIDGE AND  
BACKFLOW SOLUTIONS, INC (BSI)

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This AGREEMENT, made and entered into this 16<sup>th</sup> day of December, 2010 by and between the VILLAGE OF WOODRIDGE, an Illinois municipal corporation (“VILLAGE”) and Backflow Solutions, Inc., an Illinois Corporation (“CONSULTANT”);

WITNESSETH

WHEREAS, CONSULTANT is a firm experienced in administering cross connection control programs in compliance with all applicable laws, including Illinois Environmental Protection Agency rules and regulations; and,

WHEREAS, the VILLAGE desires to engage a consultant to assist with the efficient and effective implementation of the VILLAGE’S cross connection control program, and

WHEREAS, CONSULTANT desires to provide such services (“Services”) upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and of the covenants and conditions hereinafter set forth, the adequacy and sufficiency of which the parties hereto hereby stipulate, the parties agree as follows:

1. INCORPORATION OF RECITALS: The above “Whereas” clauses are expressly incorporated herein as substantive provisions of this Agreement.
2. SCOPE OF WORK AND RESPONSIBILITIES: Each party mutually agrees they will faithfully discharge their respective and mutual responsibilities as set forth in this Agreement.

In addition to any other responsibilities set forth in this Agreement, the VILLAGE shall:

- Furnish the CONSULTANT with a current water customer billing database, which shall include a current list of all testable Assemblies (i.e. cross connection or backflow devices), which shall identify the type of testable assembly, make, model number, serial number, size, hazard and the location address of each such Assembly (the “User Data”). All commercial business data shall be exported from the existing Tokay Software database and has been deemed to be acceptable User Data by the CONSULTANT. All residential data shall be provided to the CONSULTANT in an excel format which has been deemed to be acceptable User Data by the CONSULTANT.

- Cooperate with the CONSULTANT for the purposes of updating User Data and other information to ensure the continuing accuracy of the “Online Database”, defined as the Internet location that will be made accessible to registered and certified cross connection device control inspection companies for the purpose of entering test results on Assemblies.

In addition to any other responsibilities set forth in this Agreement, the CONSULTANT shall:

- Maintain an Online Database to insure a functional backflow Assembly tracking system that is easy to understand and use by licensed testers (“Testers”) and which meets any and all Illinois Environmental Protection Agency (IEPA) requirements. The CONSULTANT shall also maintain an internet website (the “Web Site”) where Testers shall input all data related to Backflow Tests they conduct within the VILLAGE (the “Test Report”).
  - Send two (2) notices to water customers that have Assemblies, advising them whenever their Assembly is due for testing. The form and content of all notice letters used shall be subject to review, modification, and approval by the VILLAGE. The “Test Due Notice” shall be mailed approximately 30 days prior to the scheduled test date (“Test Date”). The second notice (the “Overdue Notice”) shall be sent within two (2) business days after the Test Date has passed if the required Test Report has not been entered in the Online Data Base. The Overdue Notice will advise the water customer of its delinquent test status and recite the penalties which may result from failure to comply with the testing procedure pursuant to the local codes and ordinances.
  - 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 the CONSULTANT. At the time the Test Due Notice is mailed to the water customer, the CONSULTANT will also transmit a notice to the last Tester of record advising said Tester that the water customer’s Assembly is due to be tested (the “Tester Notification”). The Tester Notification is designed to increase test compliance, thereby reducing enforcement costs incurred by the VILLAGE.
  - Transmit an electronic notice of non-compliance via email to the VILLAGE at the pre-designated email address or addresses if CONSULTANT fails to receive a Test Report for a water customer within 15 days of the Overdue Notice.
  - Transmit a copy of each passing Test Report to the VILLAGE at the pre-designated email address or addresses within a reasonable time following its receipt, but not to exceed seven (7) calendar days.
  - Transmit a copy of each failing Test Report to the VILLAGE at the pre-designated email address or addresses the next business day after receipt by the CONSULTANT.

- Provide access to the VILLAGE for all records in the Online Database for all Assemblies and Test Reports within the VILLAGE along with the ability to generate reports for status and compliance of all Assemblies and Test Reports.
- Provide reasonable assistance to the VILLAGE in preparing requested information in the event of an audit or records request by the Illinois Environmental Protection Agency, along with attendance at any meeting with the Illinois Environmental Protection Agency, if requested by the VILLAGE.

3. COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, AND REGULATION: The CONSULTANT shall comply with all applicable Federal, State, and Local laws, ordinances, rules, regulations and applicable standards for the duration of the VILLAGE'S working relationship with the CONSULTANT. For the project specified herein, all work by the CONSULTANT shall adhere to all applicable requirements and guidelines.

4. TAXES, LICENSES, PERMITS, AND CERTIFICATES: The CONSULTANT shall pay all sales, use, property, income, and other taxes that are lawfully assessed against the CONSULTANT in connection with the CONSULTANT'S work included in this Agreement. By law, the VILLAGE is exempt from paying Federal Excise Tax, State and Local Retailers' Occupation Tax, State and Local Service Occupation Tax, Use Tax, and Service Use Tax.

5. INDEPENDENT CONTRACTOR: The CONSULTANT shall be deemed to be an independent contractor, solely responsible for the control and payment of its employees and compliance with all applicable Federal, State, and local laws. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the CONSULTANT and VILLAGE.

6. NON-ASSIGNMENT: The CONSULTANT shall not assign or subcontract this Agreement or any work thereunder, to any other person, firm, or corporation, without the prior written consent of the VILLAGE. Such assignment shall not relieve the CONSULTANT from its obligations or change the terms of this Agreement. Any and all subcontractors shall be bound to the same terms as the CONSULTANT and must supply the same documentation, including insurance requirements.

7. INSURANCE: The following minimum insurance requirements shall be met by the CONSULTANT:

COMMERCIAL GENERAL LIABILITY

Comprehensive Form

COMBINED SINGLE LIMIT PER OCCURRENCE FOR

|   |  |                    |
|---|--|--------------------|
| Premises - Operations                                       | <b>BODILY INJURY, PERSONAL INJURY, AND</b> |                    |
| Explosion & Collapse Hazard                                 | <b>PROPERTY DAMAGE</b>                     | <b>\$1,000,000</b> |
| Underground Hazard  |  |                    |
| Products/Completed Operations Hazard                        | <b>GENERAL AGGREGATE</b>                   | <b>\$2,000,000</b> |
| Contractual Insurance                                       |  |                    |
| Broad Form Property Damage -<br>construction projects only. |  |                    |
| Independent contractors                                     |  |                    |
| Personal Injury   |  |                    |

|   |                  |
|---|------------------|
| Worker's Compensation and Occupational Diseases | STATUTORY LIMITS |
| Employer's Liability per Occurrence             | \$1,000,000      |

Professional Liability -The CONSULTANT will provide evidence of \$1,000,000 per claim and aggregate limit of Professional Liability coverage.

The CONSULTANT’S General Liability policy shall be endorsed with the following language:  
"The Village of Woodridge, its officers, employees and agents are named as additional insureds as their interests may appear."

Certificates of insurance shall be provided to the VILLAGE on standard certificate forms, signed by an authorized agent of the brokerage firm or carrier providing the certificates. Carriers providing coverage shall be reputable, and only those insurance companies having an A.M. Best rating of A; class VI or better shall be used unless prior written approval is obtained from the VILLAGE. Carriers shall also be required to furnish a thirty (30) day notice of cancellation or material alteration to the Village at the following address: Village of Woodridge, 1 Plaza Drive, Woodridge, Illinois 60517-4199, Attention: Director of Public Works.

8. EMPLOYEES AND CONDUCT: The CONSULTANT shall prohibit any drinking of alcoholic beverages or use of any controlled substances, except by a doctor’s prescription, by any of its employees while in the course of performing their duties under this Agreement. In the event that any of the CONSULTANT’S employees are deemed by the VILLAGE to be unfit or unsuitable to perform the services under this Agreement as a result of intoxication, drug use, or by virtue of abusive or obnoxious behavior, then, upon formal, written request of the VILLAGE, the CONSULTANT shall remove such employee from work within the VILLAGE and furnish a suitable and competent replacement employee.

9. NON-PERFORMANCE; DEFAULT: If the CONSULTANT fails to observe the established scope of work that has been detailed in the Agreement, or modified in writing, the VILLAGE shall serve notice to the CONSULTANT that the items in non-compliance must be rectified and a reasonable timeline for completing the same.

10. GOOD FAITH DISPUTES WITH RESPECT TO PAYMENTS: In the event of any good faith dispute with respect to any cost for services, VILLAGE shall provide notice of such dispute to CONSULTANT with respect to the cost or fees for such services. In the event that a cost or fee is disputed in accordance with the provisions of this Section, the parties agree that they shall cooperate in good faith to resolve such dispute prior to the due date. In the event that the dispute is not so resolved and unless CONSULTANT agrees otherwise in writing, VILLAGE shall pay all undisputed amounts to CONSULTANT on the due date.

11. CONTRACT TERM, COST, CHANGES IN PRICING: This Agreement shall run for a period of five years commencing on January 1, 2011 and ending on December 31, 2015.

The VILLAGE shall pay the CONSULTANT the sum of four hundred and ninety five dollars (\$495.00) per calendar year as the annual "Subscription Fee". In the event VILLAGE initially subscribes for a period which is less than a full calendar year, the Subscription Fee will be prorated based on the number of days remaining in the then calendar year.

The current Subscription Fee of four hundred and ninety five dollars (\$495.00) per calendar year shall remain in effect for the 2011 and 2012 calendar years. Thereafter, the CONSULTANT may elect in its sole discretion to increase the Subscription Fee, effective January 1<sup>st</sup> of any subsequent calendar year, by the amount of the consumer price index (CPI) then current for the Chicago-Gary, Kenosha area, provided that the CONSULTANT provides the VILLAGE written notice not less than thirty (30) days prior of such increase.

12. BASELINE DATA ENTRY CHARGE: The VILLAGE acknowledges and agrees that in order for the CONSULTANT to provide the service contemplated by this Agreement, the CONSULTANT will charge the sum of \$9.95 (the "Baseline Data Entry Charge") for each Test Report submitted to the Online Data Base. The Baseline Data Entry Charge shall be paid directly to the CONSULTANT by the Tester prior to uploading the test data to the Online Data Base. The CONSULTANT shall be fully responsible

for the assessment and collection of the Baseline Data Entry Charge. The VILLAGE shall require all Testers performing Backflow Tests in its community to post all Test Reports to the Online Data Base for the duration of this Agreement. The VILLAGE further agrees that the CONSULTANT may elect to increase the Baseline Data Entry Charge, at its sole discretion, effective January 1 of any calendar year, by the amount of the consumer price index (CPI) then current for the Chicago-Gary, Kenosha area, provided that the CONSULTANT provides the VILLAGE and known Testers written notice not less than thirty (30) days prior of such increase.

13. ADDITIONAL DATA ENTRY CHARGE: The VILLAGE may, by ordinance, assess a separate charge (the "Additional Data Entry Charge") in addition to the CONSULTANT'S Baseline Data Entry Charge in order to cover the VILLAGE costs associated with the staff time and costs required for the cross connection control program and requirements under the Agreement, and increase same from time to time. In the event the VILLAGE provides written notice to the CONSULTANT of such Additional Data Entry Charge, or an increase to the rate, such amount shall be added to the Baseline Data Entry Charge on the first day of the next month and shall be a part of the payment collected directly by the CONSULTANT from each Tester. The CONSULTANT shall remit all Additional Data Entry Charge funds that are collected on behalf of the VILLAGE to the VILLAGE via check by the 15<sup>th</sup> of each month from the proceeding month's collections, at no additional cost to the VILLAGE. Upon request, the CONSULTANT shall provide any reasonable documentation requested by the VILLAGE to substantiate the funds being remitted from the assessment of the Additional Data Entry Charge.

14. WARRANTIES: CONSULTANT and VILLAGE represent and warrant each as to themselves that (i) they have all legal and corporate right and authority to enter into this Agreement and to provide and use the Services as provided hereunder; (ii) the performance of this Agreement does not and will not violate any applicable laws, regulations or cause a breach of any agreements with any third parties; and (iii) this Agreement is authorized to be executed by the undersigned individual on behalf of CONSULTANT and VILLAGE.

15. LICENSE GRANT: VILLAGE hereby grants to CONSULTANT a non-exclusive right and license to use the User Data solely for the purposes set forth in this Agreement. CONSULTANT will not use the User Data except for the purpose of performing this Agreement and, to the extent such is reasonably necessary, maintaining equipment and facilities in connection with the provision of the Services.

16. NONDISCLOSURE OF CONFIDENTIAL INFORMATION: Each party acknowledges that it will have access to certain non-public information of the other party, which may include information concerning the other party's business, plans, customer lists, technology, products, User Data, and information in tangible or intangible form that is marked or otherwise designated as confidential or otherwise ("Confidential Information"). Each party agrees that it will not disclose the information to any third party and will limit access to the confidential information to those employees and agents who have a need to know (except as required by law or to that party's attorney, accountant and other advisors as reasonably necessary). In addition, each party agrees that it will not use the Confidential Information except as expressly provided in this Agreement or as required to achieve the express purposes contemplated hereby and will take all reasonable precautions to protect the confidentiality of the information, at least as stringent as it employs to protect its own Confidential Information. Information will not be deemed Confidential Information hereunder if such information (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known independently of disclosure by the disclosing party to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, but should provide the disclosing party reasonable prior written notice or notice sufficient to permit the disclosing party to contest such disclosure.

The VILLAGE and CONSULTANT shall abide by the Identity Theft Prevention Program to implement the requirements of the Fair and Accurate Credit Transactions Act of 2003 and the federal rules and regulations promulgated thereunder (the "Red Flag Rules"). This Program is intended to establish reasonable policies and procedures to facilitate the detection, prevention and mitigation of Identity Theft. A copy of the VILLAGE program is attached hereto and made a part hereof this agreement as Exhibit A.

Additionally, the VILLAGE acknowledges that the CONSULTANT'S Online Software, Web Site and Online Data Base constitute and contain valuable proprietary products and trade secrets of the CONSULTANT and/or its suppliers. Therefore, the VILLAGE agrees:

- a) To respect and not to remove, obliterate, use or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the

CONSULTANT'S Online Software or Web Site or output generated by the CONSULTANT'S Online Software or Web Site.

- b) That it will not modify, reverse engineer, disassemble, or decompile the CONSULTANT'S Online Software, or any portion thereof.
- c) That all copies of the CONSULTANT'S Online Software in any form provided by CONSULTANT or made by the VILLAGE are the sole property of CONSULTANT and/or its suppliers. The VILLAGE shall not have any right, title, or interest to any such CONSULTANT Online Software or Web Site or copies thereof except as provided in this Agreement, and further shall secure and protect all CONSULTANT Online Software, the Web Site and any documentation related thereto consistent with maintenance of CONSULTANT'S proprietary rights therein.

Testers will only have access to the CONSULTANT'S Online Data Base for the purpose of uploading data through a user name and identity key that will change annually to augment the security of the Online Data Base and Web Site. The information contained in the Online Data Base will not be made available to any third party without the VILLAGE'S written direction.

17. GENERAL SKILLS AND KNOWLEDGE: Notwithstanding anything in this Agreement to the contrary, CONSULTANT will not be prohibited or enjoined at any time by the VILLAGE from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of CONSULTANT.

18. INDEMNITY HOLD HARMLESS PROVISION: To the fullest extent permitted by law, the CONSULTANT hereby agrees to defend, indemnify and hold harmless, individually and collectively, the VILLAGE, its officials, agents, employees, and volunteers, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in any way accrue against the VILLAGE, its officials, agents, employees, and volunteers arising in whole or in part or in consequence of the performance of work by the CONSULTANT, its employees, or subcontractors, or which may in any way result therefore, except that arising out of the sole legal cause of the VILLAGE, its officials, agents, employees, and volunteers, and the CONSULTANT shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connection therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees, and volunteers, in any such action, the CONSULTANT shall, at its own expense, satisfy and

discharge same.

The VILLAGE agrees to defend, indemnify and hold harmless, individually and collectively, the CONSULTANT, its officials, agents, and employees, against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, costs and expenses, which may accrue against the CONSULTANT, its officials, agents, and employees arising in whole or in part or in consequence of the performance of work by the VILLAGE, its employees, or subcontractors, or which may in any way result therefore, except that arising out of the sole legal cause of the CONSULTANT, its officials, agents, and employees, and the VILLAGE shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connection therewith, and, if any judgment shall be rendered against the CONSULTANT, its officials, agents, and employees, in any such action, the VILLAGE shall, at its own expense, satisfy and discharge same.

In the event of joint or concurrent negligence of the CONSULTANT and the VILLAGE, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the injury, death, loss, damage, claim, patent claim, suit, liability, judgment, cost or expense.

The CONSULTANT expressly understands and agrees that insurance policies required by this Agreement, or otherwise provided by the CONSULTANT, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the VILLAGE, its officials, agents, employees, and volunteers, and to pay expenses and damages as herein provided. The CONSULTANT further agrees that to the extent that money is due the CONSULTANT by virtue of this Agreement, an amount of said money as shall be considered necessary in the judgment of the VILLAGE, may be retained by the VILLAGE to protect itself against said loss until such claims, suits, or judgments shall have been settled or discharged and/or evidence to that effect shall have been furnished to the satisfaction of the VILLAGE.

19. TERMINATION FOR DEFAULT: The Agreement will remain in force for the full period specified. However the VILLAGE or CONSULTANT will have the right to terminate this Agreement sooner if the other party has failed to perform satisfactorily the responsibilities required by the terms of this Agreement or if the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

In the event the VILLAGE decides to terminate this Agreement for failure to perform satisfactorily, the VILLAGE will give the CONSULTANT at least ninety (90) calendar days written notice before the termination takes effect and such period shall commence upon the mailing of notice by the VILLAGE.

If the Agreement is terminated for the CONSULTANT'S failure to provide satisfactory performance, any portion of the costs not paid to the CONSULTANT shall be forfeited to the VILLAGE in order to cover the costs related to remedying the CONSULTANT'S failure to provide satisfactory performance. At the option of the VILLAGE, the CONSULTANT may be given additional time to cure the defaults.

Except as otherwise directed by the VILLAGE, or in the case of termination for default (in which event the CONSULTANT may be offered the option to cure by the VILLAGE) the CONSULTANT shall stop work on the date of the termination specified in the notice, place no further orders or subcontracts for materials, services, including but not limited to returning all unused postage escrow, or facilities except as are necessary for the completion of such portion of the work not terminated, and terminate all contractors and subcontracts (if applicable) and settle all outstanding liabilities and claims.

In the event that this Agreement is terminated for any reason, the CONSULTANT, upon written request of the VILLAGE shall deliver all current User Data to the VILLAGE in an electronic format acceptable to the VILLAGE, which may include Microsoft Excel or Access. Once the Agreement has terminated, the CONSULTANT shall submit all "Additional Data Entry Charges" that have been collected to the VILLAGE within fourteen (14) calendar days from the termination date.

20. FORCE MAJEURE: Neither party will be liable to the other for any failure or delay in rendering performance arising out of causes beyond its control and without its fault or negligence. Such causes may include, but not be limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but the failure or delay must be beyond its control and without its fault or negligence. Dates or times of performance will be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

21. MARKETING: VILLAGE agrees that during the Term, CONSULTANT may publicly refer to the VILLAGE, orally and in writing, as a Customer of CONSULTANT.

22. NON-SOLICITATION: During the Term and continuing through the first anniversary of the termination or expiration of this Agreement, VILLAGE agrees that it will not directly solicit to hire for employment any person employed by CONSULTANT.

23. GOVERNING LAW; VENUE: This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Illinois. The parties agree to the exclusive jurisdiction of courts located in DuPage County, Illinois.

24. NOTIFICATION TO OTHER PARTY: All notices hereunder shall be in writing and shall be served either personally or by certified or registered mail to:

A. VILLAGE at:  
Village of Woodridge  
ATTN: Director of Public Works  
1 Plaza Drive  
Woodridge, Illinois 60517-4199

B. CONSULTANT at:  
Backflow Solutions, Inc.  
Attention: Executive Vice-President  
12609 S. Laramie Avenue  
Alsip, IL 60803

C. To such other person or place which either party hereto by its prior written notice shall designate for notice to it from the other party hereto.

25. SEVERABILITY; WAIVER: Any provision of these terms and conditions that is prohibited or unenforceable under the laws of the State of Illinois shall be ineffective to the extent of such prohibition or unenforceability, without impairing or invalidating the remaining provisions of these terms and conditions. The waiver or failure of either Party to exercise in any respect any right provided under this Agreement shall not be deemed a waiver of such right in the future or a waiver of any other rights established under this Agreement.

26. STANDARD OF CARE: In performing the services described in this Agreement, CONSULTANT will exercise the degree of care and skill ordinarily exercised by reputable companies performing the same or similar services.

27. EQUAL EMPLOYMENT OPPORTUNITY: In the event of the CONSULTANT'S non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of the Human Rights ("Department"), the CONSULTANT may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, the CONSULTANT agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability unrelated to ability, military status, sexual orientation, or unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under utilization.
2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such act and rules and regulations, the contractor will promptly so notify the department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. That it will submit reports as required by the department's rules and regulations, furnish all relevant information as may from time to time be requested by the department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's rules and regulations.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of this Agreement's obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Agreement, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the department in the event any subcontractor fails or refuses to comply therewith. In addition, the CONSULTANT will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

#### Subcontracts

Each public subcontractor shall in turn include the equal employment opportunity clause set forth within these rules and regulations in each of its subcontracts under which any portion of this Agreement's obligations are undertaken or assumed, said inclusion to be either verbatim or by reference so that the provisions of the clause will be binding upon such subcontractors.

#### Contracts or Subcontracts with Religious Entities –

The requirements of the equal employment clause set forth above with respect to non-discrimination because of religion shall not apply to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion for the carrying on by such corporation, association, educational institution or society of its activities

28. COMPLIANCE WITH FREEDOM OF INFORMATION ACT: The VILLAGE is required by law to comply with the provisions of the Freedom of Information Act, 5 ILCS 140/1 et seq., as amended from time to time ("Act"). The Act requires the VILLAGE to provide, if requested to do so by any person, copies of documents that may be in your possession and related to this Agreement. As a condition of this Agreement, CONSULTANT agrees to and shall provide to the VILLAGE, copies of any and all such documents when directed to do so by the VILLAGE. All such documents shall be delivered to the Village Clerk's Office NO LATER THAN five (5) working days after the date of the VILLAGE'S

direction to provide such documents. Failure of the CONSULTANT to provide documents within said five (5) working days as provided above shall result in the assessment of any and all penalties, damages, and/or costs incurred by the VILLAGE to the CONSULTANT which shall be paid immediately by the CONSULTANT upon demand of the same by the VILLAGE.

29. ADDITIONAL SERVICES: Any additions or changes to the scope of services for the project, or actions/activities of the CONSULTANT which would incur additional costs, will require written pre-approval by an authorized individual of the VILLAGE. Additionally the VILLAGE may from time to time request additional services or assistance from the CONSULTANT, including but not limited to onsite inspections. The rates and charges applied shall be the same rates and charges that are in effect for all other customers of the CONSULTANT. In the event of varying rates and charges for different customers, the CONSULTANT shall charge the VILLAGE the lowest priced rates and charges then in effect.

30. ENTIRE AGREEMENT: This Agreement sets forth the entire understanding of the parties. It may only be amended, modified or terminated by a written instrument signed by the parties.

31. COUNTERPARTS: This Agreement is executed in counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

IN WITNESS THEREOF, the VILLAGE has caused this instrument to be executed by its Mayor and Village Clerk and their corporate seal affixed hereto on the day and year first above written and the CONSULTANT has caused this instrument to be executed on its behalf by the following duly authorized officer of Backflow Solutions, Inc.

VILLAGE OF WOODRIDGE, an  
Illinois municipal corporation,

By:   
Mayor

ATTEST:

  
Village Clerk

(Seal)

BACKFLOW SOLUTIONS, INC., an  
Illinois corporation,

By: Doug Eisenhower

Printed Name

Doug Eisenhower  
Signature

ATTEST:

BRAD STANCAMPIANO

Printed Name

[Signature]  
Signature

## EXHIBIT A

### VILLAGE OF WOODRIDGE

#### IDENTITY THEFT PREVENTION PROGRAM

##### I. PROGRAM ADOPTION

The Village of Woodridge (the "Village") developed this Identity Theft Prevention Program (the "Program") to implement the requirements of the Fair and Accurate Credit Transactions Act of 2003 and the federal rules and regulations promulgated thereunder (the "Red Flag Rules"). This Program is intended to establish reasonable policies and procedures to facilitate the detection, prevention and mitigation of Identity Theft in connection with the opening of new Covered Accounts and activity on existing Covered Accounts.

##### II. PROGRAM PURPOSE AND DEFINITIONS

###### A. Fulfilling requirements of the Red Flag Rules

Under the Red Flag Rules, every financial institution and creditor is required to establish a program tailored to its size, complexity and the nature of its operation. Each program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the program;
2. Detect Red Flags that have been incorporated into the program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

###### B. Definitions

When used in this Program, the following terms have the meanings set forth opposite their name, unless the context clearly requires that the term be given a different meaning:

Covered Account: The term "Covered Account" means any account that the Village offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments of transactions. A utility account is a "Covered Account". The term "Covered Account" also includes any accounts offered or maintained by the Village for which there is a reasonably foreseeable risk to Customers or to the safety and soundness of the Village from Identity Theft. (16 CFR 681.2(b)(3)(ii)).

Customer: The term "Customer" means a person that has a Covered Account with the Village, as defined herein.

Identity Theft: The term "Identity Theft" means a fraud committed or attempted using the Identifying Information of another person without authority.

Identifying Information: The term “Identifying Information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number. Additional examples of “Identifying Information” are set forth in 16 CFR §603.2(a).

Red Flag: The term “Red Flag” means a pattern, practice or specific activity that indicates the possible existence of Identity Theft.

Certain terms used but not otherwise defined herein shall have the meanings given to them in the FTC’s Identity Theft Rules (16 CFR Part 681) or the Fair Credit Reporting Act of 1970 (15 U.S.C. §1681 *et seq.*), as amended by the Fair and Accurate Credit Transactions Act of 2003.

### III. ADMINISTRATION OF THE PROGRAM

The initial adoption and approval of this Program shall be by Resolution of the Village Board. Thereafter, changes to this Program of a day-to-day operational character and decisions relating to the interpretation and implementation of this Program may be made by the Director of Finance who shall be the Program Administrator. Major revisions of this policy shall be approved by the Village Board.

### IV. IDENTIFICATION OF RELEVANT RED FLAGS

The Village has considered the guidelines and the illustrative examples of possible Red Flags from the Red Flag Rules and has reviewed the Village’s past history with instances of Identity Theft, if any. The Village hereby determines that the following are the relevant Red Flags for purposes of this Program given the relative size of the Village and the limited nature and scope of the services that the Village provides to its citizens:

- A. Alerts, notifications, or other warnings received from consumer reporting agencies or service providers including:
  - 1. Report of a credit freeze.
  - 2. Report of an address disparity.
  - 3. Report of fraud or an active duty alert.
  - 4. Report which indicates a pattern of activity that is inconsistent with the history and unusual pattern of activity of an applicant for a Covered Account or a Customer including, without limitation:
    - i. A recent and significant increase in volume of inquiries;
    - ii. An unusual number of recently established credit relationships;
    - iii. A material change in the use of credit, especially with respect to recently established credit relationships; or
    - iv. An account that was closed for cause or identified for abuse of account privileges by any financial institution or creditor.
  
- B. The presentation of suspicious documents, including:
  - 1. Documents provided for identification appear to have been altered or forged (any document for identification which appears not to be genuine and unaltered).

2. The photo or physical description on the identification documentation is not consistent with the appearance of the applicant presenting the identification documentation.
3. Any information which is not consistent with the identification of the applicant (including, without limitation, documentation given to open or close an account and signatures on a check which appear to be forged).

C. The presentation of suspicious personal Identifying Information, including:

1. Personal identification is of the same type associated with fraudulent activity: fictitious address, mail box drop, or a prison or phone number is invalid or phone number is associated with a pager or answering service.
2. Personal identification provided is associated with known fraudulent activity.
3. Personal identification is inconsistent with utility records.
4. The Customer fails to provide all needed personal identification upon request.
5. The address or telephone number is the same or similar to the account number or telephone number submitted by an unusually large number of persons opening accounts or other Customers.

D. The unusual use of, or other suspicious activity related to, a Covered Account, including:

1. The Village is notified of unauthorized charges or transactions in connection with a Customer's account.
2. Customer notifies the Village that they are not receiving their bill.
3. Mail sent to Customer is repeatedly returned.
4. Payments are made in a manner associated with fraud. For example, a deposit or initial payment is made and no payments are made thereafter.
5. A Covered Account is used in a manner that is not consistent with established patterns of activity on the account, such as nonpayment when there is no history of late or missed payments.
6. The Village is notified by a customer, a victim of identity theft, a law enforcement official or others, that it has opened a fraudulent account for a person engaged in Identity Theft.

V. DETECTION OF RED FLAGS

The employees of the Village that interact directly with Customers on a day-to-day basis shall have the initial responsibility for monitoring the information and documentation provided by the Customer and any third-party service provider in connection with the opening of new accounts and the modification of or access to existing accounts and the detection of any Red Flags that might arise. The Program Administrator shall see to it that all employees who might be called upon to assist a Customer with the opening of a new account or with modifying or otherwise accessing an existing account are properly trained such that they have a working familiarity with the relevant Red Flags identified in this Program so as to be able to recognize any Red Flags that might surface in connection with the transaction.

Attached hereto as Attachment No. 1 is the procedure to be followed in order for a prospective new Customer to open a new account. The Program Administrator shall establish from time to time a written policy setting forth the manner in which Customers with existing accounts shall establish their identity before being allowed to make modifications to or otherwise access the existing accounts.

VI. RESPONSE TO DETECTED RED FLAGS TO PREVENT AND MITIGATE IDENTITY THEFT

Appropriate responses to prevent or mitigate Identity Theft when a Red Flag is detected include:

1. Verifying and monitoring a Covered Account for evidence of Identity Theft.
2. Contacting the Customer.
3. Changing any passwords, security codes, or other security devices that permit access to a Covered Account.
4. Reopening a Covered Account with a new account number.
5. Not opening a new Covered Account.
6. Closing an existing Covered Account.
7. Not attempting to collect on a Covered Account or not selling a Covered Account to a debt collector.
8. Notifying law enforcement.
9. Determining that no response is warranted under the particular circumstances.
10. Contact Bank institution for signature verification
11. Not accepting or depositing payments that appear fraudulent.

In order to further prevent the likelihood of Identity Theft, the Village will take the following steps with respect to its internal operating procedures to protect Identifying Information:

1. Ensure that its website is secure or provide clear notice that the website is not secure.
2. Ensure complete and secure destruction of paper documents and computer files containing Identifying Information.
3. Ensure that office computers are password protected and that computer screens lock after a set period of time.
4. Keep office clear of papers containing Identifying Information.
5. Ensure computer virus protection is up to date.
6. Require and keep only the kinds of Identifying Information that are necessary for Village purposes.

## VII. PROGRAM UPDATES – RISK ASSESSMENT

This Program, including relevant Red Flags, is to be updated as often as necessary but at least annually to reflect changes in risks to Customers from Identity Theft. If warranted, the Program Administrator will update the Program or present the Village Board with recommended changes. Factors to consider in the Program update include:

1. An assessment of the risk factors identified above.
2. Any identified Red Flag weaknesses in associated account systems or procedures.
3. Changes in methods of Identity Theft.
4. Changes in methods to detect, prevent, and mitigate Identity Theft.
5. Changes in business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.
6. Any and all relevant changes to Federal, State or local laws.

All staff, employees and third-party service providers performing any activity in connection with one or more Covered Accounts are to be provided appropriate training and receive effective oversight to ensure that the activity is conducted in accordance with policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

## VIII. SERVICE PROVIDER ARRANGEMENTS

In the event the Village engages a service provider to perform an activity in connection with one or more Covered Accounts, the Village will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of Identity Theft:

1. Require that service providers have such policies and procedures in place; and
2. Require that service providers review the Village's Program and report any Red Flags to the Program Administrator.

