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February 29, 2016

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OF COUNSEL

IN REPLY REFER TO FILE NO.

Mr. William McCarty
3725 Tamarak Drive
Springfield, Illinois 62712
wmccarty@government311.com

EP-1

Re: Freedom of Information Act Request

Dear Mr. McCarty:

On February 22, 2016, the Village of Elmwood Park received your Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA") request for the following records:

"I request a copy (electronically scanned and emailed preferred) of the village's agreement/contract with the company that provided the village's smartphone app. I believe the company is Constiuent [*sic*] Outreach Consultants, Inc."

Enclosed please find the records responsive to your FOIA request. However, please be advised that certain information in the records responsive to your FOIA request has been determined to be exempt from disclosure under FOIA. Accordingly, such information has been redacted from the records being provided.

Section 7(1)(b) of FOIA provides that "private information" is exempt from disclosure. "Private information" is defined in FOIA as, "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2(c-5). Consequently, signatures have been redacted from the records being provided.

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Mr. William McCarty
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The person responsible for the decision to deny a portion of your FOIA request is the Village of Elmwood Park Freedom of Information Officer, Gina Pesko. In accordance with Section 9(a) of FOIA, you are hereby notified that you have the right to file a Request for Review regarding the decision made by the Village of Elmwood Park Freedom of Information Officer with the Public Access Counselor at the Illinois Attorney General's Office. You can file your Request for Review with the Public Access Counselor by writing to:

Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

If you choose to file a Request for Review with the Public Access Counselor, you must do so within 60 calendar days of the date of this letter. Please note that you must include a copy of your original FOIA request and this letter when filing a Request for Review with the Public Access Counselor.

You are also notified that you have the right to judicial review regarding the decision made by the Village of Elmwood Park Freedom of Information Officer pursuant to Section 11 of FOIA.

Sincerely,

STORINO, RAMELLO & DURKIN
Attorneys for the Village of Elmwood Park


Erin C. Tinaglia

Enclosures

**A RESOLUTION APPROVING AN
AGREEMENT BETWEEN THE VILLAGE OF ELMWOOD PARK
AND CONSTITUENT OUTREACH CONSULTANTS, LLC**

NOW, THEREFORE, BE IT RESOLVED by the President and the Board of Trustees of the Village of Elmwood Park, Cook County, Illinois, as follows:

Section 1. That certain Agreement between the Village of Elmwood Park and Constituent Outreach Consultants, LLC, ("Agreement"), a copy of which is attached hereto as Exhibit "A", is hereby approved.

Section 2. The Village President is hereby authorized and directed to execute said Agreement on behalf of the Village of Elmwood Park, in substantially the form of such Agreement appended to this Resolution.

Section 3. This Resolution shall be in full force and effect upon its passage and approval as provided by law.

Resolved this 19th day of October, 2009.

AYES: 6

NAYS: 1

ABSENT: 0

PETER N. SILVESTRI
VILLAGE PRESIDENT

ATTEST:

ELSIE SUTTER
VILLAGE CLERK

AGREEMENT BETWEEN THE VILLAGE OF ELMWOOD PARK
AND CONSTITUENT OUTREACH CONSULTANTS, LLC

This Consultant Agreement ("Agreement") is made this 19th day of October 2009, by and between Constituent Outreach Consultants LLC ("Consultant"), an Illinois Limited Liability Corporation and the Village of Elmwood Park ("the Village").

RECITALS

WHEREAS, Consultant is a consultant group engaged in delivering and communicating Governmental Agencies desired messages to constituencies through modern media and new technology. Consultant will plan, implement and perform an efficient and effective communication strategy using new technology to communicate with residents and other constituencies.

WHEREAS, Consultant will ensure the completion and integration of all the technical, procurement, and other tasks necessary for the design, test, construction, introduction and support of communication of the desired message to be delivered. Consultant shall identify, maintain and submit to the Village contacts, addresses, telephone numbers, and other forms of contact necessary to communicate to residents and other constituents.

NOW THEREFORE, in consideration of the covenants and mutual agreement here in contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. ENGAGEMENT/SERVICES

- 1.1 Consultant will provide the following services, as more fully described in Exhibit A, attached hereto and incorporated herein:
 - a. E-newsletters
 - b. Social Network Consulting

- 1.2 Consultant shall provide the Village with the following programs, as more fully described in Exhibit A:
 - a. E-newsletters
 - b. Social Network Consulting

- 1.3 The Village engages Consultant to use the agreed upon component programs described in Section 1.2 for a period of time beginning on the date this Agreement is fully executed by the parties and ending on April 19, 2010.

2. COMPENSATION

- 2.1 Fees. The Village will pay monthly fees and costs to Consultant in the amount specified herein:

a. E-newsletters:	\$ 500.00/month
b. Social Network Consulting:	\$ 500.00/month
TOTAL	\$ 1,000.00/month

- 2.2 Payment of Expenses.

- (a) The Village shall be responsible for the cost of all postage and other certified mailing as desired.
- (b) The Village will reimburse additional expense to Consultant not explicitly agreed to in Section 2.2(a), only if such expenses have been approved in writing by the Village Manager prior to the expenditure.

3. FORCE MAJEURE

Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

4. PREVAILING WAGE

The Consultant agrees to abide by the Prevailing Wage Act, where applicable.

5. EQUAL EMPLOYMENT OPPORTUNITY

The Consultant shall assure that all persons employed by the Consultant, and all applicants for such employment, will not be discriminated against because of their race, creed, color, sex, handicap or national origin. The Consultant shall also comply with all rules and regulations of the Illinois Department of Human Rights, Illinois Human Rights Commission and the Equal Employment Opportunity Commission.

6. DEFAULT AND TERMINATION

a. **Default.** Each party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional period as the non-defaulting party may authorize). In addition, if at any time after commencement of the Services the Village shall, in its sole reasonable judgment, determine that such services are inadequate, unsatisfactory, or substantially not conforming to the descriptions, warranties, or representations contained herein, the Village may terminate this Agreement upon sixty (60) days' written notice to the Consultant.

b. **Termination.** In the event of termination not the fault of the Consultant, the Consultant shall be compensated to the date of termination, together with all provable costs and expenses incurred by the Consultant up to the date of termination.

Upon the termination of this Agreement by either party, the Consultant shall immediately deliver to the Village copies of all passwords, lists of email addresses for residents and any other constituencies, and other such information and data accumulated by the Consultant in the performance of services under this Agreement whether complete or in process which documents and materials shall be the sole property of the Village.

7. DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure, all costs and expenses of said mediation to be bore by each party. If they do not reach such solution within a period of 60 days from the date of the last mediation conference, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration rules.

8. COMPLIANCE WITH LAW

The parties shall comply with all applicable federal, state and local laws, statues, ordinances and codes in effect or as applicable to or as affecting any work or services performed under this Agreement.

9. NOTICE

All notices required herein shall be in writing and shall be deemed received when a copy thereof, addressed to such Party as provided here in, is delivered by personal delivery, facsimile, or the next business day after being sent by a generally recognized overnight delivery service, or three (3) days after being sent by certified or registered mail return receipt requested, postage prepaid, to the address listed below or in such other address as one party may designate in writing to the other party.

For Consultant:

Mr. Andrew Todd
CONSTITUENT OUTREACH CONSULTANTS, LLC
3400 W. 111th Street
Chicago, Illinois 60655

For Village:

Mr. Jay Dalicandro, Village Manager
Village of Elmwood Park
11 Conti Parkway
Elmwood Park, Illinois 60707

10. STATUS AS INDEPENDENT CONTRACTOR

The Consultant and the Village are contractors independent of one another, and neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Consultant shall be responsible for payment of all taxes imposed in connection with its performance of services and receipt of fees under this Agreement.

11. ASSIGNS

All of the terms and condition of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

12. SEVERABILITY

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court of any other governmental body, this Agreement shall be construed as not containing such

provision, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

13. COOPERATION

Consultant will make every effort at all times cooperate fully with the Village. If the Agreement is terminated for any reason, or if it is to expire on its own terms, Consultant must make every effort to assure orderly demobilization of its own operations and must otherwise comply with the reasonable requests and requirements of the Village in connection with the termination or expiration. Upon termination or satisfaction of this Agreement, Consultant will turn over all passwords, email addresses, and other data subject to this Agreement to the Village. Upon receipt of passwords, email address and other data subject to this Agreement, the Village will take all reasonable steps to change passwords and protect email addresses and other data subject to this Agreement.

14. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original hereof and all of which together shall constitute one and the same instrument.

15. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Illinois.

16. AMENDMENTS

No changes, amendments, modifications or discharge of the Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Consultant and the Village or their respective successors and assigns.

17. ENTIRE AGREEMENT

This Agreement and the Exhibits attached to it, constitute the entire agreement between the Parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement.

18. AUTHORITY

The individual officers, agents and employees of Consultant and the Village who have executed this Agreement hereby individually represent and warrant that they have full power and lawful authority to execute this Agreement and perform the transactions contemplated hereunder on behalf of and in the name of their respective principals and/or employers.

19. RIDER

The obligations of the Consultant and the Village under the terms and provisions of the "Rider to Agreement between the Village of Elmwood Park and Constituent Outreach Consultants, LLC", attached hereto as Exhibit B, are agreed to and incorporated into this Agreement as though fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Rider to be duly executed.

Village of Elmwood Park
Cook County, Illinois

Village President, Peter N. Silvestri

Date: October 19, 2009

Constituent Outreach Consultants, LLC.
Cook County, Illinois

Owner, Mr. Andrew Todd

Date: 10-26-09

Exhibit A

a. E-newsletters

Consultant will secure email addresses and create an email list for residents of the Village through individual email vendors.

Consultant will work with individual staff members of the Village to acquire additional email addresses for inclusion in the email list.

Consultant will create one email template to be used for the purposes of sending e-newsletters to the Village email list. (Additional email templates can be created upon written request from the Village at a rate of \$750 per template.)

Consultant will, upon approval from the Village, cause the approved e-newsletter to be sent to the Village's email list

Consultant will create an e-newsletter schedule with specific timelines that include, but are not limited to:

- Date e-newsletters will be sent out
- Date draft e-newsletter to be approved
- Date content must be received from the Village

b. Social Network Consulting

Consultant will create an account for the Village on Facebook, so long as Facebook is a viable, online, social networking site.

Consultant will create an account for the Village on Twitter, so long as Twitter is a viable, online, social networking site.

Consultant will create an account for the Village on YouTube, so long as YouTube is a viable, online, social networking and video hosting site.

Consultant will create an account for the Village on Vimeo, so long as Vimeo is a viable, online, social networking and video hosting site.

Consultant will, at the request of the Village post, or cause to be posted content on appropriate social networking sites.

At the request of the Village, Consultant will examine the feasibility of creating and managing accounts on additional Social Networking sites.

Exhibit B
**RIDER TO AGREEMENT BETWEEN THE VILLAGE OF ELMWOOD PARK
AND CONSTITUENT OUTREACH CONSULTANTS, LLC**

This Rider, dated October 19, 2009, is made by and between the Village of Elmwood Park ("Village") and Constituent Outreach Consultants, LLC, ("Consultant"), and supplements that certain Agreement between the Village of Elmwood Park and Constituent Outreach Consultants, LLC, dated October 19, 2009, ("Agreement"), by and between the Village and Consultant. Village and Consultant hereby agree as follows:

1. The Consultant represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the Village that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, contractors, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from and related to any breach of the foregoing representations and warranties.
2. The Village agrees that payments for services provided in the Agreement shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 et. seq.).
3. The Consultant certifies that the Consultant, its shareholders holding more than five percent (5%) of the outstanding shares of the Consultant, its officers and directors are:

- a. not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
- b. in compliance with equal employment opportunities and that during the performance of the Agreement. In addition to the terms provided in the Agreement, the Consultant shall:
 - (1) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an 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 underutilization.
 - (2) If it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Right'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) 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, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 - (4) 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 Consultant'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 Consultant in its efforts to comply with such Act and Rules and Regulations, the Consultant will promptly so notify the Illinois Department of Human Rights and the Village and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
 - (5) Submit reports as required by the Illinois Department of Human Rights, 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) Permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
 - (7) Not maintain or provide for its employees any segregated facilities at any of its establishments, and not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this section, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise.
- c. in compliance with 775 ILCS 5/2-105(A)(4) by having in place and enforcing a written sexual harassment policy.
 - d. in agreement that in the event of non-compliance with the provisions of this certification relating to equal employment opportunity, the Illinois Human Rights Act or the Illinois Department of Human Rights, Rules and Regulations, the Consultant may be declared ineligible for future contracts with the Village, and this Agreement may be canceled 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.
 - e. in compliance with 30 ILCS 580/1 *et. seq.* (Drug Free Workplace Act) by providing a drug-free workplace by:
 - (1) Publishing a statement:
 - (a) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the Consultant's workplace.
 - (b) Specifying the actions that will be taken against employees for violations of such prohibition.
 - (c) Notifying the employee that, as a condition of employment on such Agreement, the employee will:
 - (i) abide by the terms of the statement; and

- (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
 - (2) Establishing a drug-free awareness program to inform employees about:
 - (a) the dangers of drug abuse in the workplace;
 - (b) the Consultant's policy of maintaining a drug-free workplace;
 - (c) any available drug counseling, rehabilitation, and employee assistance program; and
 - (d) the penalties that may be imposed upon employees for drug violations.
 - (3) Making it a requirement to give a copy of the statement required by subparagraph 3.e.(1) to each employee engaged in the performance of the Agreement, and to post the statement in a prominent place in the workplace.
 - (4) Notifying the Village within ten (10) days after receiving notice under Subparagraph 3.e.(1)(c) (ii) from any employee or otherwise receiving actual notice of such conviction.
 - (5) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by 30 ILCS 580/5.
 - (6) Assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicating that a trained referral team is in place.
 - (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.
4. Consultant certifies that no officer or employee of the Village has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Consultant in violation of Section 2-8A-3, Chapter 2 of the Village Code of the Village of Elmwood

Park pursuant to the requirements of Article 10 of the State Officials and Employees Ethics Act.

5. Consultant certifies that Consultant has not given to any officer or employee of the Village any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Consultant in violation of Section 2-8A-3, Chapter 2 of the Village Code of the Village of Elmwood Park pursuant to the requirements of Article 10 of the State Officials and Employees Ethics Act.

IN WITNESS WHEREOF, the parties hereto have caused this Rider to be duly executed.

Village of Elmwood Park
Cook County, Illinois

Village President, Peter N. Silvestri

Date: October 19, 2009

Constituent Outreach Consultants, LLC.
Cook County, Illinois

Owner, Mr. Andrew Todd

Date: 10-26-09