

**RESOLUTION NO. R-19-31**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT  
BETWEEN THE VILLAGE OF CAMPTON HILLS, KANE COUNTY, ILLINOIS AND  
ROADBOTICS**

**WHEREAS**, the Village of Campton Hills, Kane County, Illinois (the "*Village*") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

**WHEREAS**, the Village and RoadBotics desire to execute a professional services agreement for the assessment of the pavement condition of 102 miles of Village roadway (the "*Agreement*"); and

**WHEREAS**, the Village has a satisfactory relationship with RoadBotics; and

**WHEREAS**, the Village President and Board of Trustees of the Village of Campton Hills (the "*Corporate Authorities*") deem it advisable and in the best interest of the health, safety and welfare of the residents of the Village to enter into the Agreement.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Campton Hills, Kane County, Illinois, as follows

**Section 1.** That the above recitals and legislative findings are found to be true and correct and are hereby incorporated herein and made a part hereof, as if fully set forth in their entirety.

**Section 2.** The Agreement by and between the Village and RoadBotics, which is attached hereto and made a part hereof as Exhibit A, is hereby approved in substantially the form presented to the Village Board with such necessary non-material changes as may be authorized by the Village President, the execution thereof to constitute the approval by the Village of any and all changes or revisions therein contained.

**Section 3.** That the officials and officers of the Village are further hereby authorized

to undertake actions on the part of the Village as contained in the Agreement to complete satisfaction of the provisions, terms or conditions stated therein

**Section 4.** If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any other provision of this Resolution.

**Section 5.** All ordinances, resolutions, motions or orders in conflict with this Resolution are hereby repealed to the extent of such conflict.

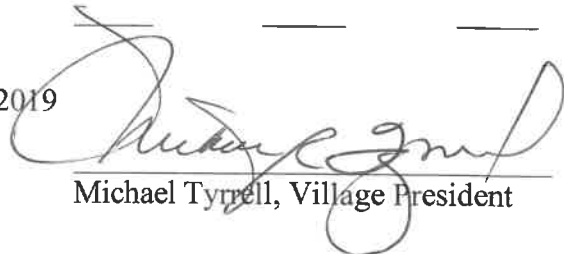
**Section 6.** This Resolution shall be in full force and effect upon its passage, approval, and publication in the manner provided by law.

*Intentionally Left Blank*

Passed this 15<sup>th</sup> day of October, 2019, pursuant to a roll call vote as follows:

	AYES	NAYES	ABSENT	ABSTAIN
Trustee Darlene Bakk	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Susan P George	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Jim McKelvie (2)	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Mike Millette (1)	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Michael O'Dwyer	<input checked="" type="checkbox"/>	_____	_____	_____
Trustee Wendy K. White Eagle	_____	_____	<input checked="" type="checkbox"/>	_____
President Michael Tyrrell	_____	_____	_____	_____

APPROVED this 15<sup>th</sup> day of October, 2019



Michael Tyrrell, Village President

(SEAL)

ATTEST:



Lynn Baez, Village Clerk

Exhibit A

*Agreement*



# RoadBotics

Prepared for: The Village of Campton Hills, IL

by Shane Witt

On: 9/10/2019

Subscription Proposal Valid Until: 10/17/2019

# What's Included

## **RoadWay**

Interactive Web-Based GIS Map Platform

Customers are provided access to the online, cloud-based platform, RoadWay. Access includes a map of the RoadWay Pavement Assessment and the ability to navigate and view all the relevant rating and image data associated with that assessment. Tools are provided for both planning and maintenance activities to allow users to hone in on road sections that require maintenance attention or consideration for long-term planning.

## **RoadWay Pavement Assessment**

Unique Road Condition Assessment

Every approximately 10-foot (3 meter) point on the road, as well as each section of road is scored using our advanced machine learning algorithm on a 1-5 scale that runs from good condition to poor condition (level one and level 5, respectively). This information is also available in the form of downloadable GIS files (\*.shp, \*.geojson or \*.kml) and CSV Files.

## **RoadMap**

Basemap Confirmation

RB's trained mapping professionals will augment a customer's current GIS files of their roadways to confirm a GIS basemap (RoadMap) that defines the centerline miles for the contracted road network. The RoadMap serves as the foundation for the RoadWay Pavement Assessment. If the Customer does not possess a GIS map of its road network at the time of signing, RoadBotics will develop one for the Customer. At the Customer's request, RB will provide the Customer with the digital basemap GIS file.

## **RoadBot**

Data Collection

RoadBotics will arrange for trained service professionals to perform comprehensive data collection of the customer road network.

## **RoadSide Support**

Complete Customer Support

The Customer will have access to RB's suite of customer services (RoadSide Support). Through RoadSide Support, RB's team of dedicated customer success professionals will provide the Customer with (1) onboarding support to ensure the successful collection of data and delivery of RoadWay Pavement Assessment, (2) training and walkthrough of Customer's unique RoadWay Pavement Assessment, (3) individualized support to help the Customer reach maximum success in their use of their RoadWay Pavement Assessment and pavement management needs and (4) ongoing access to RoadBotics online customer success platform.

## Subscription Details

<i>Expiration Date</i>	This Proposal is valid up to and until this date. After this date, RoadBotics cannot guarantee the specifics below and may update the specifics at its sole discretion by issuing a new Proposal.	10/17/2019
<i>Network Mileage</i>	The centerline mileage of the network to be assessed.	102
<i>Subscription Term</i>	The amount of time from the signature date the Customer has access to the RoadWay Platform and RoadSide Support.	12 months
<i>Number of Scans</i>	The number of scans to be performed in the term of this agreement.	1 time(s)
<i>Data Collection</i>	The date upon which RoadBotics will begin data collection of the network.  **Weather conditions may delay the Data Collection start date. RoadBotics will contact the customer if any such conditions arise.	No later than...  11/28/2019
<i>Delivery Date</i>	The date upon which RoadBotics will deliver the final Roadway Platform credentials.	No later than...  1/9/2020

## Fees

<i>RoadWay Subscription Fee</i>	The annual fee paid to RoadBotics for the Subscription to RoadWay.	\$10,200
<i>Payment Terms</i>	Customer will be invoiced upon execution of this proposal in accordance with the payment terms in Section 3 of the Terms & Conditions upon acceptance of this proposal.	

# TERMS AND CONDITIONS

RoadBotics, Inc. ("RoadBotics"), located at 224 N Euclid Ave., 4<sup>th</sup> Floor, Pittsburgh, PA 15206, will provide to **The Village of Campton Hills, IL** ("Customer") access to certain services ("Services") pursuant to the provisions of these Terms & Conditions ("Agreement") as outlined below. RoadBotics and Customer agree as follows:

1. General Terms. In consideration of the payment for the assessment specified below, RoadBotics will provide Customer access to RoadWay, its innovative pavement monitoring and management platform as part of its Program as further outlined in this agreement. The Services will include all components listed above in "What's Included" with specific terms of the Program provided above.
2. Specific Terms. Customer shall have access to the RoadWay platform along with access to any specific components specified above for the period specified. Customer owns the RoadWay Pavement Assessment as specified. Customer hereby grants RoadBotics a perpetual, non-exclusive license to access, analyze, use internally, and publish or display on its own websites, any RoadWay Pavement Assessment specified. Additionally, RoadBotics grants to Customer a perpetual, non-exclusive, non-transferable license to use, analyze, and publish or display on its websites, any complimentary images or visualizations provided by RoadBotics in conjunction with Customer's purchased RoadWay Pavement Assessment.
3. Fees and Payment. Customer shall pay to RoadBotics a subscription fee according to a payment schedule as specified above. All fees shall be paid within thirty (30) days of the date of invoice.
  - 3.1. *Payment Schedule.* In years two and beyond, fees will be invoiced upon the anniversary of the contract signature, or no later than 6 months after the contract signature date.
  - 3.2. *Failure to Pay.* Failure to pay within the specified period may, at the sole discretion of RoadBotics, result in a modification of the Delivery Date of the services or cancellation of this Agreement. In the event of a changed delivery date, the Customer will be given notice in writing of the new delivery date. Continued failure to pay, may result in additional delays in the Delivery Date along an additional 10% surcharge on the fees.
  - 3.3. *Payments not Received.* Payments not received by RoadBotics in accordance with the terms of this Agreement are subject to interest at the rate of one percent (1.0%) per month of the unpaid balance or the maximum rate under law, if such maximum rate is less than 1.0% per month. In addition, RoadBotics may suspend its performance under this Agreement if Customer fails to comply with any part of its payment obligation.
4. Term and Termination. The term of this Agreement will begin on the contract signature date and continue for twelve (12) months (the "Term")



- 4.1. *Early Termination.* Customer shall have an option to terminate this Agreement during the Term. Customer shall provide written notice to RoadBotics of its intention to exercise such early termination option at least 30 days prior to the requested termination date and, with the written notice, Customer shall pay a termination fee representing 20% of remaining balance owed during the Term.
5. Price Adjustments. During the Term, the RoadWay Subscription fee shall not increase unless there is a substantial increase in the cost to RoadBotics of providing the RoadWay service. In such event the increase shall be limited to no more than 10% of the total value of the Subscription Fee. RoadBotics shall provide at least thirty (30) days advance notice of such increase.
6. Warranties. RoadBotics will use reasonable commercial efforts to make the Services available during the term specified. In the event of breach of this warranty for the Services, RoadBotics' sole and exclusive obligation, and Customer's sole and exclusive remedies, shall be to 1) receive a refund the applicable portion of the subscription fee applicable to the Services for the period such Services were not available because of breach by RoadBotics; and 2) terminate the Agreement without penalty.
7. Confidentiality. "Confidential Information" means all confidential and proprietary information of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party"), whether orally or in writing, including but not limited to the terms and conditions of this Agreement business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate. The obligations undertaken by the Receiving Party under this Paragraph 7 shall not apply to requests made to the Receiving Party under the Freedom of Information Act. Notwithstanding the foregoing, the Receiving Party will use its best efforts to alert the Disclosing Party of any such requests during the Term.
8. Limitation of Liability. ROADBOTICS'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT SHALL IN NO

EVENT EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO ROADBOTICS FOR THE APPLICABLE SERVICES. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE SERVICES WOULD BE HIGHER.

9. Miscellaneous.

- 9.1. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any claim or controversy arising under this agreement or relating to this agreement shall be settled by arbitration, before an arbitrator who is a licensed attorney in accordance with the Commercial Arbitration Rules then in effect. The place of arbitration shall be Pittsburgh, Pennsylvania. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Notice of the demand for arbitration shall be filed in writing with the other party to the agreement and with the American Arbitration Association. The demand shall be made within 12 months after the claim, dispute, or other matter in question has arisen.
- 9.2. RoadBotics may identify Customer as a customer of RoadBotics, including a general description of the products and services provided by RoadBotics to Customer. Neither party will disclose the pricing or other specific terms of this Agreement without the prior written consent of the other party except as may be required by law.
- 9.3. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case RoadBotics and Customer agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.
- 9.4. The parties hereunder are independent contractors. Neither party shall have any right to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other party. This Agreement is not intended to be, nor shall it be construed as a joint venture, association, partnership or other forms of a business organization or agency relationship.
- 9.5. This Agreement, including the Proposed Terms above constitutes the entire Agreement between the Customer and RoadBotics with respect to the subject matter hereof, and no waiver, modification, alteration or amendment of any of the terms or conditions hereof shall be effective unless and until set forth in a writing duly signed by authorized representatives of RoadBotics and Customer.
- 9.6. RoadBotics shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond RoadBotics' reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.
- 9.7. All notices to either party shall be in writing and delivered by hand or by certified mail or overnight delivery service to the address set forth by Customer or RoadBotics or to such other address as either party shall give by notice to the other party. Notices shall be effective when delivered to the applicable address.

9.8. The provisions of Sections 3, 4, 5, 6, 7, 8, and 9.10 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

- 9.9. Customer gives RoadBotics permission to use its official logo and municipal name (collectively the "Marks") for inclusion on RoadBotics' website and any media content or messages published for the purpose of informing the Customer's constituent community of data collection. To use the Marks for purposes other than the cases defined herein, RoadBotics must receive written consent and approval by the Customer. The Customer hereby releases RoadBotics from all liability relating to the publication or use of the Marks.
- 9.10. RoadBotics hereby agrees to defend, indemnify, and hold harmless the Customer, its officials, employees, and agents from any and all claims of any nature which arise from the performance by RoadBotics under this Agreement and from all reasonable costs and customary attorney fees in connection therewith, excepting for claims arising out of the negligence of the Customer, its officials, directors, employees, and agents. The obligations of RoadBotics under this section shall survive the termination of this Agreement.

IN WITNESS, WHEREOF, the parties have executed this Agreement as of the later of the dates set forth below.

**Customer:** The Village of Campton Hills, IL

**RoadBotics, Inc.**

Signature:



Signature:

Date:

10/15/2019.

Date:

Printed Name:

Michael R. Tyrren

Printed Name:

Title:

president.

Title: