

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
X Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: November 27, 2012 (COW)(B of T) December 20, 2012

TITLE: A Motion to Approve an Intergovernmental Agreement with the Illinois
Comptroller's Office and Authorize an Agreement with XSELL
Technologies for Revenue Reconciliation for the Local Debt Recovery
Program

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

Attached are two memos presented to the Finance Committee on November 26, 2012 for Illinois Comptrollers' Office (IOC) Local Debt Recovery Program and a proposal to contract with XSELL Technologies. The memo dated November 16, 2012 has a chart with a list of entities who have received funds from this program. The column titled # Offsets, is the number of taxpayers offset by the State for each local entity. The column titled Offset \$, is the amount of tax payer dollars sitting in the State's offset trust fund awaiting disbursement to the local entities. Offsets have to remain in the offset trust fund for 60 days before being disbursed. The 60 days is meant to give a taxpayer sufficient time to file a dispute. The column titled \$ Pd to Entity, is the total amount as of October 5, 2012 that was paid out to the local entity.

In August, the Village of Lombard worked with XSELL Technologies to create a test file of the amounts owed to the Village for parking tickets. XSELL then submitted this test file of 3,509 records to the IOC. Of these 3,509 records, the IOC was able to match 1,465 records, or 41.7% based on the name and addresses we provided. These matches represent \$350,000 of the total outstanding amount, or 40.7%. The IOC compared these matches to the tax returns filed for 2011 and found that \$78,646.01 could have been collected, which is 9.2% of the total outstanding parking tickets.

The attached IGA was prepared by the IOC. The Finance Committee recommended approval of the IGA and authorizing and agreement with XSELL Technologies for the Local Debt Recovery Program.

Review (as necessary):

Village Attorney X _____

Finance Director X _____

Village Manager X _____

Date _____

Date 12/11/12

Date _____



To: Finance Committee
David A. Hulseberg, Village Manager

From: Timothy Sexton
Director of Finance

Date: November 16, 2012

Subject: Local Debt Recovery Program - Intergovernmental Agreement with the Illinois Comptroller's Office and Request to Contract with XSELL Technologies for Match File Assistance

On September 17, 2012, the Finance Committee discussed the Local Debt Recovery Program being offered by the Illinois Comptroller's Office (IOC). Attached is the original memo to the Local Debt Recovery Program. The Finance Committee requested that staff bring back more information from those who have already implemented the program.

Altogether, about 40 units of government statewide have passed intergovernmental agreements with the IOC. As of June 13, 2012, the IOC received about 1,900 protests out of 65,000 instances of debt recovery. Below is a list of entities and their current results as of October 5, 2012. Offsets have to remain in the offset trust fund for 60 days before they are disbursed to the Local Claiming Entity

Entity	# of Offsets	Offset \$	\$ Pd to Entity
Carl Sandburg College	1	\$229.03	\$0.00
City of Chicago	68,356	\$11,038,228.00	\$10,516,724.00
City of Collinsville	117	\$8,389.00	\$7,427.00
City of Joliet	578	\$22,964.00	\$17,924.00
City of Northlake	12	\$1,689.00	\$1,054.00
City of Springfield	930	\$27,425.00	\$25,563.00
College of DuPage	791	\$89,045.00	\$71,646.00
Lake Land College	1,033	\$11,397.00	\$104,885.00
Village of Elk Grove	532	\$44,966.00	\$41,664.00

Most of the negative publicity for Chicago had to do with the fact that as part of the pilot program, the City was allowed to go back further than 7 years on delinquent payments. That was changed as a matter of policy for all newly registered entities in late April, and all of the pilot entities, including Chicago, have had to comply since July

1st. The mayor announced recently that money reclaimed through this process will be earmarked for 50 new police officers and summer programs for children.

In early April Elk Grove submitted approximately 28,000 records to the IOC. Of these 28,000 records the IOC was able to match only about 4,000 records based on the name and address provided by Elk Grove. This equates to about a 15% match rate. They recently contracted with XSEL to increase their match rate.

College of DuPage entered into an Intergovernmental Program Agreement with the State and turned debt records totaling \$8.4 million over to the IOC. According to the chart above, they received a total of \$71,646 in 2012.

Joliet forwarded 25,000 records and matched 13,600 for a rate of 54%. Thus far they have collected on 437 tickets or \$17,924 in receipts. They still have approximately \$562,000 outstanding. They have been very pleased with the program thus far and expect to collect much more in 2013 when they encounter the income tax season. This time of year was anticipated to be slower with respect to collections. Thus far they have experienced a few calls, but no formal complaints or objections. Most citizens are pleased with the program, because they believe it is unfair for abiding citizens to pay their debt while others attempt to avoid it. Setting up the program took a little longer than originally expected, but they wanted to ensure the data forwarded to the State was clean. Joliet also has an older software system which required additional programming to interact with the State. The program manager stated that the State has been very good to work with and supportive along the way.



To: Finance Committee
David A. Hulseberg, Village Manager

From: Timothy Sexton
Director of Finance

Date: September 17, 2012

Subject: Local Debt Recovery Program - Intergovernmental Agreement with the Illinois Comptroller's Office and Request to Contract with XSELL Technologies for Match File Assistance

On August 8, 2011 Public Act 097-0632 was passed with an effective date of January 1, 2012 authorizing a Debt Recovery Program which allows revenues ordinarily paid to businesses and residents to be offset by the amount of unpaid fines and fees they've accrued with local governments. The source of these revenues can be tax refunds, paychecks (for State employees), and even lottery winnings.

There are three main areas that there is a significant amount of outstanding amounts due the Village of Lombard – ambulance fees, parking tickets and water bills. Below are the amounts in each of these areas that are significantly past due:

Ambulance Fees	\$865,000
Parking Tickets	\$859,000
Water Bills	\$127,000

Currently, out of these outstanding fines/fees, only parking tickets are eligible to be collected through the Local Debt Recovery Program.

The logistics of the program are fully handled through the Illinois Office of the Comptroller (IOC). Prior to the IOC issuing a state tax refund to an individual who owes money to a governmental entity, the amount owed to the local government plus an administrative fee will be deducted and deposited in the Comptroller Debt Recover Fund. The debtor will be provided a written notice of the action and has 60 days to protest the deduction with the IOC. If no protest is made, at the end of the 60 day period, the amount owed will be transferred to the local unit of government. The average IL State tax return is approximately \$250.00. Therefore, it could take several years to completely pay off a large debt owed by one person.

In terms of the costs for the program, there is a \$15 transaction fee for each debt collected which is passed on to the debtor. As such, there is no cost to the Village of Lombard. This program is offered on a first come, first serve basis. The IOC has limitations as to how many governmental entities it will be able to service. Additionally, the outstanding amount owed to municipalities will be run in the order of the intergovernmental agreements that were accepted. As such, if the Village of Lombard is going to be a participant of this program it is important to join prior to the next income tax season.

Initially, staff attempted working with IOC staff to get a file to the state of the amounts owed to the Village for parking tickets. Beyond just sending the initial file, Village staff would need to update the file every time a payment was made directly to the Village. Due to the complexity of working with the state and several months of attempting this, it was determined that this was not something that could be accomplished in-house.

In August, the Village of Lombard worked with XSELL Technologies to create a test file of the amounts owed to the Village for parking tickets. XSELL then submitted this test file of 3,509 records to the IOC. Of these 3,509 records, the IOC was able to match 1,465 records, or 41.7% based on the name and addresses we provided. These matches represent \$350,000 of the total outstanding amount, or 40.7%. The IOC compared these matches to the tax returns filed for 2011 and found that \$78,646.01 could have been collected, which is 9.2% of the total outstanding parking tickets.

XSELL Technologies can assist communities such as ours to increase our match rate. They do this by running our data through a series of algorithms that scrub the data and then compare unmatched records to those that were matched. By doing so, they can determine whether a data entry error may have resulted in the record not being matched. In addition, they provide accurate and ongoing maintenance to file amendments per IOC guidelines.

The cost to have XSELL Technologies assist with these data algorithms and provide their software is 10% of actual revenues recouped. The term of this agreement would be for one year and would automatically renew for another one year term, unless either party provides notice of termination.

I am requesting at this time that the Finance Committee concur in our recommendation to enter into an intergovernmental agreement for the Debt Recovery Program with the Illinois Comptroller's office and to award a contract to XSELL Technologies to assist with this program. Upon committee approval, this recommendation will be presented to the Village Board for their consideration and approval.

Attachments:

**Draft Intergovernmental Agreement for the Local Debt Recovery Program
Village of Lombard/XSELL Revenue Reconciliation Statement of Work**

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE ILLINOIS OFFICE OF THE COMPTROLLER
AND
THE VILLAGE OF LOMBARD
REGARDING ACCESS TO THE COMPTROLLER'S LOCAL DEBT RECOVERY
PROGRAM**

This Intergovernmental Agreement ("the Agreement") is hereby made and entered into as of the date of execution by and between the Illinois Office of the Comptroller (hereinafter "IOC") and the Village of Lombard (hereinafter "the local unit"), in order to provide the named local unit access to the Local Debt Recovery Program for purposes of collecting both tax and nontax debts owed to the named local unit. Each of the parties hereto is a "public agency" as defined in Section 2 of the Intergovernmental Cooperation Act [5 ILCS 220/2].

WHEREAS, both the State of Illinois and the local unit have a responsibility to collect debts owed to its respective public bodies;

WHEREAS, IOC operates a system, known as the Comptroller's Offset System (hereinafter, "the System"), for collection of debt owed the State by persons receiving payments from the State;

WHEREAS, the Illinois General Assembly specifically provided for the ability of the local unit to utilize the System when it amended Section 10.05 and added Section 10.05d to the State Comptroller Act [P.A. 97-632; 15 ILCS 405/10.05 and 10.05d];

WHEREAS, IOC and the local unit are empowered under the Illinois Constitution [Ill. Const., Art. VII, Sec. 10], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Section 10.05d of the State Comptroller Act (hereinafter, "the Act") [15 ILCS 405/10.05d] to contract with each other in any manner not prohibited by law;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

Article I – Purpose

The purpose of the Agreement between the IOC and the local unit is to establish the terms and conditions for the offset of the State's tax and nontax payments in order to collect tax and nontax debts owed to the local unit.

Article II – Authority

The authority for State payment offset is granted under Section 10.05 of the Act [15 ILCS 405/10.05] and the authority for entering into this Agreement is granted under Section

10.05d of the Act [15 ILCS 405/10.05d], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Article VII of the Illinois Constitution [Ill. Const., Art. VII, Sec. 10].

Article III – State Payment Offset Requirements and Operations

A. Legal Requirements. The offset of State payments shall be conducted pursuant to the authority granted in Section 10.05 and 10.05d of the Act [15 ILCS 405/10.05 and 10.05d] and the requirements set forth in this Agreement.

1. Definition of “Debt”

- (a) For purposes of this Agreement, debt shall mean any monies owed to the local unit which is less than 7 years past the date of final determination, as confirmed by the local unit in Article III(A)(2)(a)(viii) of this Agreement.
- (b) No debt which is more than 7 years past the date of final determination may be placed or may remain on the System.

2. Due Process & Notification

- (a) Before submitting a debt to IOC for State payment offset, the local unit must comply with all of the notification requirements of this Agreement. For purposes of this Agreement, notification of an account or claim eligible to be offset shall occur when the local unit submits to IOC the following information:
 - (i) the name and address and/or another unique identifier of the person against whom the claim exists;
 - (ii) the amount of the claim then due and payable to the local unit;
 - (iii) the reason why there is an amount due to the local unit (i.e., tax liability, overpayment, etc.);
 - (iv) the time period to which the claim is attributable;
 - (v) the local entity to which the debt is owed;
 - (vi) a description of the type of notification has been given to the person against whom the claim exists and the type of opportunity to be heard afforded such person;
 - (vii) a statement as to the outcome of any hearings or other

proceedings held to establish the debt, or a statement that no hearing was requested; and,

(viii) the date of final determination of the debt.

- (b) IOC will not process a claim under the Agreement until notification has been received from the local unit that the debt has been established through notice and opportunity to be heard.
- (c) The local unit is required to provide the debtor with information about a procedure to challenge the existence, amount, and current collectability of the debt prior to the submission of a claim to IOC for entry into the System. The decision resulting from the utilization of this procedure must be reviewable.

3. Certification

- (a) The chief officer of the local unit must, at the time the debt is referred, certify that the debt is past due and legally enforceable in the amount stated, and that there is no legal bar to collection by State payment offset (See Appendix A).
- (b) Only debts finally determined as currently due and payable may be certified to IOC as a claim for offset.
- (c) The chief officer of the local unit may delegate to a responsible person or persons the authority to execute the statement of the claim required by the Agreement.
- (d) This delegation of authority shall be made on forms provided by the Comptroller and shall contain a signature sample of the person(s) to whom the delegation is made.
- (e) For purposes of this Agreement, "chief officer of the local unit" means Village Manager_.

4. Notification of Change in Status

- (a) The chief officer must notify IOC as soon as possible, but in no case later than 30 days, after receiving notice of a change in the status of an offset claim.
- (b) A change in status may include, but is not limited to, payments received other than through a successful offset, the filing of a bankruptcy petition, the death of the debtor, or the expiration of the

ability for the debt to remain on the System, as provided for in Article III(A)(1)(b) of this Agreement.

- B. Operational Requirements. Upon receiving a data file from the chief officer pursuant to the terms of this Agreement, IOC will perform a match with the local unit's debt file using a debtor's social security number, taxpayer identification number, name, address, or other unique identifier. The chief officer will receive a weekly file from IOC indicating the matches, at which time the local unit will update its debtor records. The chief officer will assume the responsibility of providing updates to the debtor records on file with IOC in order to ensure an equitable resolution of the debts owed to the local unit.
1. Technical Requirements. IOC agrees to work with the local unit to facilitate information and data procedures as provided for in this Agreement. The local unit agrees to adhere to the standards and practices of IOC when transmitting and receiving data.
 2. Fee. A fee shall be charged to the debtor in order to recover the cost to IOC for administrating the System. The fee shall be per payment transaction and shall be \$15, unless the payment is for an amount less than \$30, in which case the fee shall be equal to the amount offset. The fee will be deducted from the payment to be offset prior to issuance to the local unit.
 3. Offset Notices. IOC will send offset notices to the debtor upon processing a claim under the Act and this Agreement. The notice will state that a request has been made to make an offset against a payment due to the debtor, identify the local unit as the entity submitting the request, provide the debtor with a phone number made available pursuant to Article III (B)(6) of this Agreement, and inform the debtor that they may formally protest the offset within sixty (60) days of the written notice.
 4. IOC Protest Process. If a protest is received, IOC will determine the amount due and payable to the local unit. This determination will be made by a Hearing Officer and will be made in light of all information relating to the transaction in the possession of IOC and any other information IOC may request and obtain from the local unit and the debtor subject to the offset. If IOC requests information from the local unit relating to the offset, the local unit will respond within sixty (60) days of IOC's request. IOC may grant the local unit an additional sixty (60) day extension for time to respond.
 5. IOC Hearing Officer. The local unit hereby agrees to provide the Hearing Officer with any information requested in an efficient and timely manner in order to facilitate the prompt resolution to protests filed as a result of this Agreement. For purposes of this Agreement, any decision rendered

by the Hearing Officer shall be binding on the local unit and shall be the final determination on the matter. The Hearing Officer may continue the review of a protest at his/her discretion in order to assure an equitable resolution.

6. Local Unit Call Center. The local unit hereby agrees to provide a working phone number which IOC will furnish to persons offset under this Agreement. The local unit shall ensure that the phone number is properly staffed in order to provide information about the debt the local unit is offsetting under this Agreement. The phone number for purposes of this Section and the Agreement is: 630-873-4400.
7. Debt Priorities
 - (a) If a debtor has more than one local unit debt, the debt with the oldest date of delinquency shall be offset first.
 - (b) Any debt that is less than or equal to \$9.99 which is placed or remains on the System will not be offset and will not be paid to the local unit until such time as the balance owed to the local unit by the debtor exceeds \$9.99.
8. Transfer of Payment. Transfer of payment by IOC to the local unit shall be made in the form of electronic funds transfer (EFT). Nothing in this section or this Agreement shall limit the ability of either party to modify this Agreement at a later date in order to provide for an alternative method(s) of payment transfer.
9. IOC Refunds. If IOC determines that a payment is erroneous or otherwise not due to the local unit, IOC will process a refund of the offset, and refund the amount offset to the debtor. In the event the refund results in only a partial refund to the debtor, IOC will retain the fee referenced in Article III, Paragraph B, Section 2 above. The fee will only be refunded to the debtor in the event of a full refund of the offset amount.
10. Local Unit Refunds. The local unit is responsible for refunding monies to the debtor if an offset occurred due to inaccurate debt information or over collection, and the local unit has already received payment from IOC. IOC will only refund monies in the event that a payment has not yet been made to the local unit.

Article IV – Permissible Use of Information

IOC acknowledges that the local unit is providing sensitive information about local debts for the purpose of conducting offsets under the Agreement. As such, IOC will use the

information solely in connection with the Local Debt Recovery Program. IOC shall safeguard the local information in the same manner as it protects State debt information.

The local unit acknowledges that IOC is providing sensitive information about State payments for the purpose of conducting offsets under the Agreement. As such, the local unit will use the information solely in connection with the Local Debt Recovery Program. The local unit shall safeguard State information in the same manner as it protects local debt information.

The parties may use information in any litigation involving the parties, when such information is relevant to the litigation.

Article V – Term of the Agreement and Modifications

The Agreement becomes effective as of the Effective Date and shall remain in effect until it is terminated by one of the parties. Either party may terminate this Agreement by giving the other party written notice at least thirty (30) days prior to the effective date of the termination. Any modifications to the Agreement shall be in writing and signed by both parties.

Article VI – No Liability to Other Parties

Except for the fees described in Article III, paragraph B, Section 2 above, each party shall be responsible for its own costs incurred in connection with the Agreement. Each party shall be responsible for resolving and reconciling its own errors, but shall not be liable to any other parties for damages of any kind as a result of errors. Each party shall be liable for the acts and omissions of its own employees and agents. The Agreement does not confer any rights or benefits on any third party.

Article VII – Issue Resolution

The parties acknowledge that IOC is ultimately responsible for the development, design and operation of the System. Subject to that understanding, the parties agree to work cooperatively to resolve any matters that arise during the development, design and implementation of the program. If an issue cannot be resolved informally by mutual agreement of staff personnel, then the parties agree to elevate the issue to a senior level manager for resolution of the issue. For purposes of the Agreement, the “senior level managers” are:

1. IOC: Ray Marchiori, Director – Department of Government and Community Affairs
2. Local Unit: Jamie Cunningham, Assistant Director of Finance

Article VIII – Contacts

The points of contacts for this Agreement are:

IOC: Alissa Camp, General Counsel
Illinois Office of the Comptroller
325 West Adams
Springfield, Illinois 62704
Phone: 217/782-6000
Fax: 217/782-2112
E-mail: CampAJ@mail.ioc.state.il.us

Local Unit: _____

(Legal Counsel)

Article IX – Acceptance of Terms and Commitment

The signing of this document by authorized officials forms a binding commitment between IOC and the Village of Lombard. The parties are obligated to perform in accordance with the terms and conditions of this document, any properly executed modification, addition, or amendment thereto, any attachment, appendix, addendum, or supplemental thereto, and any documents and requirements incorporated by reference.

By their signing, the signatories represent and certify that they possess the authority to bind their respective organizations to the terms of this document, and hereby do so.

[Signature Page Follows]

IN WITNESS WHEREOF, the Illinois Office of the Comptroller and the Village of Lombard by the following officials sign their names to enter into this agreement.

ILLINOIS OFFICE OF THE COMPTROLLER

By: _____

Date: _____

Name: Judy Baar Topinka

Title: Comptroller

Village of Lombard

By: _____

Date: _____

Name:

Title:

Appendix A



STATE OF ILLINOIS
COMPTROLLER
JUDY BAAR TOPINKA

Local Debt Recovery Program

Involuntary Withholding Tape/File Certification Form

Local Unit Name: _____

Tape #/File Type: _____

Record Count: _____

Dollar Amount: _____

Please mark the appropriate box:

Add Tape/File

- The debtor(s) has (have) been sent a notice that a claim has been established against said person thus giving the debtor the opportunity to appeal the determination of the existence and amount of the claim(s).
- No hearing(s) was (were) requested or a hearing(s) was (were) held and the result(s) was (were) that the claim(s) was (were) found to be valid in the amount(s) referenced in the attached record.
- The date(s) of the final determination of the debt(s) for each claim was prior to the date of submittal of the claim to IOC for Local Debt Recovery purposes.

Change Tape/File

- All change transactions contained on the enclosed tape/file meet the criteria for inclusion in the Local Debt Recovery Program.

Delete Tape/File

- All claims contained on the enclosed tape/file no longer meet the criteria for inclusion in the Local Debt Recovery Program, and should be removed from the Program.

I, _____, do hereby certify that all of the debts included on the tape/file are in compliance with the requirements of the State Comptroller Act [15 ILCS 405] and the Intergovernmental Agreement entered into between the above named local unit and the Illinois Office of the Comptroller. If I am submitting a facsimile or email signature, I hereby certify by so filing that the original signed document exists in my possession.

Authorized Signature: _____ Date: _____

Local Unit: _____ Phone #: _____

ATTACHMENT A TO SOW
TERMS AND CONDITIONS

The following Terms and Conditions constitute part of and are incorporated into, the Revenue Reconciliation Statement of Work ("SOW") between XSELL and Village of Lombard:

1. **Definitions.**

(a) "Confidential Information" means any proprietary information, LCE information or data, , technical data, know-how, research, experiments, inventions, processes, formulas, designs, drawings, products, services, plans, marketing strategies, finances, software, source code, hardware configuration, or other information disclosed by Village of Lombard or XSELL, their representatives, affiliates, vendors or citizens, or their officers, employees, agents, representatives, independent contractors, or attorneys, in writing, orally, electronically, or by drawings or inspection of parts or equipment, and includes any other information that the parties may reasonably understand to be confidential. Work Product (as hereinafter defined) are hereby deemed to be the Confidential Information of XSELL. Confidential Information does not include information: (a) already known by a party at the time it is disclosed as shown by written records; (b) publicly known without breach of this SOW; (c) received from a third party, other than Village of Lombard, authorized to disclose it without restriction; (d) independently developed by a party without use of Confidential Information; or (e) required by law, regulation or valid court or government order to be disclosed, provided a party first notifies the other party of such required disclosure, so the other party may seek a protective order pertaining to such information.

(b) "Intellectual Property" means collectively: (a) trademarks, trade names, service marks, trade dress, product configurations, logos and other trade identities, trade secrets, know-how, mask work rights, inventions, formulas, algorithms, business methods, rights in packaging, computer software (in source code and object code formats), domain names, uniform resource locaters, Internet protocol addresses, websites (and source codes for websites), patents, patent rights, copyrights, moral rights, authorship rights and other ownership rights, owned in whole or part by a party; (b) common law rights, licenses, royalties, assignments, associated goodwill, applications, registrations, renewals and extensions for all of the items under (a) above in the United States, each individual state thereof, and all other countries and jurisdictions worldwide; and (c) agreements relating to (a) or (b) above to which a party hereto is a party (including expiration dates, if applicable), including, without limitation, all agreements relating to technology, know-how, processes, website development and hosting, software (including, but not limited to, all agreements covering application software and operating system software and all agreements with application service providers), and hardware.

(c) "Work Product" means improvements, inventions, developments, discoveries, processes, techniques, products, and data, whether or not subject to patent; creative works, preliminary concepts, concept executions, and all other copyrightable material; reports, notes, records and other documentation; designs and/or mechanicals; source code and other documentation that would assist in modifying, enhancing or maintaining delivered software; and trade secrets; as well as all their derivatives and modifications that XSELL's personnel, agents or contractors make, conceive or reduce to practice, solely or with others, while performing services in connection with this SOW.

2. **Confidentiality.** Village of Lombard and XSELL and their respective personnel shall use the other party's Confidential Information solely to fulfill the purposes of this SOW, and each shall take all reasonable precautions to prevent unauthorized disclosure thereof. Neither Village of Lombard nor XSELL shall make any public disclosure of the other party's Confidential Information in the absence of the prior written consent of the other party. Upon termination of this SOW or upon demand, except as otherwise provided herein, the parties shall promptly return to each other all property and Confidential Information of the other party. If agreed, a certificate of destruction may be provided in lieu of return of the Confidential Information, with sufficient detail regarding the Confidential Information destroyed, destruction date, and assurance that all copies also were destroyed. Village of Lombard and XSELL shall retain ownership rights of any Confidential Information deemed to be owned by them pursuant to the terms of this SOW.

3. **XSELL Proprietary Rights in Work Product.** The parties acknowledge and agree that the rendering of the services under this SOW and the creation of any property or property rights associated therewith shall not constitute work-made-for-hire, and any such property or property rights shall be considered the Work Product of, and owned by, XSELL. Nothing contained in this SOW shall give Village of Lombard any ownership rights in any materials or information contained in the Work Product developed or acquired by XSELL, or licensed by XSELL from any person not a party or affiliate of a party, all of the foregoing deemed and agreed to constitute the proprietary Intellectual Property and/or Confidential Information of XSELL. XSELL shall own all worldwide right, title and interest in and to all Work Product (including, without limitation, all related Intellectual Property rights) from the time that the same is or are created, authored, invented, discovered or first reduced to practice, and neither Village of Lombard nor any of its personnel or affiliates shall obtain any right, title or interest therein or thereto, whatsoever. Subject to any separate license agreement between the parties, XSELL and/or its licensors shall retain ownership of all right, title and interest in and to all separately licensed software, and no license thereto is granted to Village of Lombard under this SOW.

4. **Independent Contractor.** The parties are, remain, and shall continue to conduct themselves as, independent contractors and this SOW shall not be interpreted as appointing XSELL or Village of Lombard or their respective personnel as agents, employees, lessees, partners, or joint venturers of the other. Neither XSELL (its affiliates or personnel) nor Village of Lombard (its affiliates or personnel), shall attempt to bind or obligate the other party in any matter or for any reason without the express prior written consent of the party to be bound. Neither party shall be liable for the debts, obligations or liabilities of the other party.

5. **Disclaimers and Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS SOW AND/OR ITS SUBJECT MATTER, REGARDLESS OF THE THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

THE WARRANTIES PROVIDED, IF ANY, BY XSELL HEREUNDER AND THE LIABILITIES OF XSELL HEREUNDER ARE EXCLUSIVE AND IN LIEU OF, AND VILLAGE OF LOMBARD HEREBY WAIVES, ALL OTHER WARRANTIES, GUARANTIES OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY OBLIGATIONS OF XSELL WITH RESPECT TO FITNESS AND MERCHANTABILITY FOR A PARTICULAR PURPOSE) OR WHETHER OR NOT OCCASIONED BY XSELL'S NEGLIGENCE. NO WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY XSELL AND VILLAGE OF LOMBARD. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, XSELL'S LIABILITY TO VILLAGE OF LOMBARD SHALL NOT EXCEED THE AMOUNT PAID BY VILLAGE OF LOMBARD TO XSELL UNDER A PARTICULAR INVOICE FOR SERVICES PROVIDED UNDER SUCH INVOICE.