

# Village of Swansea, Illinois

1444 BOUL AVE ST, SWANSEA IL 62226 (618) 234-0044 FAX (618) 234-0222  
www.swanseail.org

## REQUEST FOR QUALIFICATIONS (RFQ) Limited Architectural Consulting Services Issued: January 10, 2018

### **PUBLIC NOTICE REQUEST FOR QUALIFICATIONS (RFQ) Architectural Consulting Services**

Notice is hereby given that the Village of Swansea, IL is seeking statements of interest and qualifications from licensed, experienced and competent architectural firms for specific and limited architectural consulting services related to remodeling of the Swansea Police Department at 1400 N. Illinois Street, Swansea, IL. RFQ documents are available at the office of the Village Administrator, 1444 Boul Ave, Swansea, Illinois 62226, by email request to [Swanadm@swanseail.org](mailto:Swanadm@swanseail.org), or by calling 618-234-0044. Qualification submittals will be received at the same address above until 10:00am on January 22, 2018. The Village reserves the right to accept or reject, at the sole discretion of the Board of Trustees, any and all submittals to the Village subsequent to this Request for Qualifications as well as any or all consulting firms if they are deemed to be unacceptable.

Any questions, requests for clarification, or for other information, should be directed to the Village Administrator, via email to [Ljoost@swanseail.org](mailto:Ljoost@swanseail.org).

By Order of the Village of Swansea

Barb Kimutis  
Deputy Village Clerk

## **SUMMARY OF REQUEST**

The Village of Swansea, Illinois, is seeking the services of qualified consultants to perform specific architectural consulting services related to remodeling of the Swansea Police Department at 1400 N. Illinois Street, Swansea, IL. This building originally served as the Swansea Government Center which housed the Police, Administrative, Building & Zoning and Sewer Billing staff. All departments other than Police have since moved to another location.

The original structure was built in 1986 as a one-story, slab on grade rectangular frame structure approximately 50' x 86' in size, with brick veneer and flat roof. In 1994, an addition of approximately 5,200 square feet was added to the north and east sides and was exclusively designed for and occupied by the Police Department. That addition is also a frame structure with brick veneer but includes a partial ( $\pm 1,950$  sq. ft.), unfinished basement under the eastern portion of the addition. The basement is used for file and other storage.

The remodeling budget is very limited for this project. As such, the Village will act as its own General Contractor and prepare bid packages for various components of the Work. At the same time, the Village's in-house staff intend to self-perform demolition, most wall construction, and some other components. The Village has already prepared a draft floor plan that generally reflects the intended focus of this remodeling project and the desired use of the structure once completed. For the purposes of staging construction activities, remodeling of the original 1986 structure will be considered Phase I, and remodeling of the 1994 addition will be considered Phase II.

Because of this approach, the Village does not need to procure full architectural design or construction plans for this project. Instead, the Village is seeking an architect to act as an advisor and consultant to the Village with a limited scope of services, as detailed below.

## **SCOPE OF WORK**

The actual services required may vary somewhat, but the general Scope of Work is expected to include, but may not be limited to the following:

1. Architectural Design Services
  - a. Convert the Village's draft floor plans into to-scale, CAD based floor plans.
  - b. Review and evaluate the proposed Work and floor plan in relation to the Illinois Accessibility Code, ADA, and any similar regulations and advise the Village of any areas of potential non-compliance.
  - c. Review and evaluate the proposed Work and floor plan in relation to the Village's adopted building codes and advise the Village of any areas of potential non-compliance.
  - d. Review and evaluate the proposed Work and floor plan in relation to the Illinois Energy Conservation Code and advise the Village of any areas of potential non-compliance.
  - e. Make modifications to the CAD floor plan, as directed, to ensure compliance with the above.
  - f. Provide advice and assistance to the Village, if needed and requested, in the specification and selection of interior finishes.

- g. Provide advice and assistance to the Village, if needed and requested, in the specification of any newly created opening through load bearing walls, preparing a detailed drawing for the construction of that opening as needed.
- h. Provide advice and assistance to the Village, if needed and requested, in the Village's preparation of specifications for Mechanical, Plumbing, Electrical, or other components of the Work.
- i. Submit to the Village any required or requested drawings or documents, each signed and sealed by the licensed architect under whose direction each was prepared, or as is necessary or appropriate in securing building permits for such remodeling projects.
- j. Assist the Village, if needed and requested, with preparing estimates of probable cost for specified components of the project.
- k. If necessary because of changes made during actual construction, make modifications to the CAD floor plan so that the final plan reflects "as-built" conditions.
- l. Provide the Village with final electronic files of the actual CAD drawings, as well as PDF versions of said drawings.
- m. As previously noted, the Village's intent is to stage construction activities, initiating the remodeling of the original 1986 structure as soon as possible. Therefore, the Work above may be broken into Phase I and Phase II designs, if it seems appropriate or necessary to do so to facilitate the Village's construction schedule.

## **SELECTION PROCESS**

It is the Village's intent to develop a qualifications based short list of interested architectural firms, identify the one deemed most qualified for the above Scope of Work, and negotiate a contract with that firm for the Work. Because of the variability of the potential need for some services, it is expected that this contract will be negotiated for hourly rates, not to exceed a stated maximum.

The Board of Trustees reserves the right to accept or reject any submittal to the Village under this Request for Qualifications and may also reject any or all consulting firms if they are deemed to be unacceptable at the sole discretion of the Board of Trustees.

Nothing in these documents shall be construed as an offer to contract, but shall merely be construed as an invitation to submit proposals.

## **REQUEST FOR QUALIFICATIONS**

Any firms interested in providing the above scope of services to the Village shall express that through the submission of a Letter of Interest and a Statement of Qualifications. That Statement should include the following information:

- a. The name of the firm, corporate office address, address of the office closest to Swansea, and a brief history.
- b. A statement that the firm is able to provide all of the services in the Scope of Services listed above, with current, in-house staff, or if not, a specific listing of those services the firm will provide in house, those it proposes to provide through subconsultants, and those it does not propose to provide.
- c. Résumés of key personnel who might be assigned to provide the scope of services outlined above.

- d. Experience of the firm on similar projects during the last five years, including project name, and description, client name, client contact information, month and year completed, and value of the construction.
- e. Copies of any and all of the registrations with the State of Illinois, including as an Illinois Professional Design Firm, Architect, or Structural Engineer, for both the firm and any individuals who will work on the project.
- f. Any additional information not listed above which you believe may be useful and helpful to determining the qualifications of your firm, provided however, that the total submittal of letter and qualifications may not exceed thirty (30) pages.

## **EVALUATION PROCESS**

All Statements of Qualifications will be evaluated upon the following criteria:

1. The degree to which the submittal is complete and responsive to the requirements specified in this RFQ, including its clarity, organization, and presentation.
2. The degree to which the firm is able to provide the full scope of work tasks with in-house, qualified staff.
3. The level of the firm's experience with similar tasks and projects.
4. Any specialized experience and technical competence of individuals within the firm.
5. Any provided examples of completing work on time, in budget, and at a level of performance that is satisfactory to the client.
6. The Village may also conduct interviews with select consultants at a date and time to be determined.
7. Any such interview will consist of a 15-minute presentation followed by up to one half-hour of questions from the Village.
8. Village staff will recommend to the Village Board of Trustees the firm to be selected and the Board of Trustees will then make the final selection.

## **PROCESS FOR ANY CLARIFICATION**

Any inquiries or requests for clarification should be directed to Mr. Lyndon J. Joost, Village Administrator, in writing and via email to [Ljoost@swanseail.org](mailto:Ljoost@swanseail.org). Clarification will be provided in writing by reply email to all who have requested an RFQ packet at that time. No clarification will be provided verbally, either in person or over the telephone, and no one other than the Village Administrator is authorized to provide clarification on behalf of the Village.

## **SCHEDULE**

Each firm must submit three (3) copies of their Letter of Interest and Statement of Qualifications in a single sealed packet directed to the attention of:

Lyndon J. Joost, Village Administrator  
Village of Swansea  
1444 Boul Ave  
Swansea, IL 62226

All such submittals must be received by the Village of Swansea no later than 10:00 am on Monday, January 22, 2018.

The planned schedule for this RFQ process is as follows:

- Request for Qualifications Issued – Monday, January 10, 2018
- Letters of Interest and Qualifications Due – Monday, January 22, 2018 at 10:00 am
- Consultant Interviews (if necessary) – Week of January 22 - 26, 2018
- Short List and Recommendation – Thursday, February 1, 2018
- Village Board Selection – Monday, February 5, 2018 at 7:30 pm
- Contract Negotiation – February 6 -14, 2018
- Contract Award – Tuesday, February 20, 2018

## **PROPOSED CONTRACT**

The contract format, terms and conditions proposed for use by the Village for this Request for Qualifications, is attached on the following pages as the Limited Architectural Consulting Services Contract. By doing so, any firm submitting qualifications in response to this RFQ acknowledges their willingness to enter into this contract without substantial changes to language or terms, unless specific objections are stated and included in the firm's submittal.

**DO NOT SUBMIT ANY INFORMATION IN RELATION TO THE CONTRACT FORMAT BELOW.  
THIS DRAFT CONTRACT IS FOR INFORMATIONAL PURPOSES ONLY AT THIS TIME**

## Village of Swansea, Illinois

1444 BOUL AVE ST, SWANSEA IL 62226 (618) 234-0044 FAX (618) 234-0222  
www.swanseail.org

### Limited Architectural Consulting Services

This contract ("Contract"), with an effective date of \_\_\_\_\_, 2018 is by and between the Village of Swansea ("VILLAGE") and \_\_\_\_\_ ("CONSULTANT").

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

#### 1. SCOPE OF SERVICES

1.1 CONSULTANT shall perform any of the services set forth below as the Scope of Work as requested and directed by VILLAGE, and shall do so in strict conformity with the terms and conditions of this Contract.

#### 1.2 Architectural Design Services

- Convert the Village's draft floor plans into to scale, CAD based floor plans.
- Review and evaluate the proposed Work and floor plan in relation to the Illinois Accessibility Code, ADA, and any similar regulations and advise the Village of any areas of potential non-compliance.
- Review and evaluate the proposed Work and floor plan in relation to the Village's adopted building codes and advise the Village of any areas of potential non-compliance.
- Review and evaluate the proposed Work and floor plan in relation to the Illinois Energy Conservation Code and advise the Village of any areas of potential non-compliance.
- Make modifications to the CAD floor plan, as directed, to ensure compliance with the above.
- Provide advice and assistance to the Village, if needed and requested, in the specification and selection of interior finishes.
- Provide advice and assistance to the Village, if needed and requested, in the specification of any newly created opening through load bearing walls, preparing a detailed drawing for the construction of that opening as needed.
- Provide advice and assistance to the Village, if needed and requested, in the Village's preparation of specifications for Mechanical, Plumbing, Electrical, Fire Suppression, or other components of the Work.
- Submit to the Village any required or requested drawings or documents, each signed and sealed by the licensed architect under whose direction each was prepared, or as is necessary or appropriate in securing building permits for such remodeling projects.
- Assist the Village, if needed and requested, with preparing estimates of probable cost for specified components of the project.
- If necessary because of changes made during actual construction, make modifications to the CAD floor plan so that the final plan reflects "as-built" conditions.
- Provide the Village with final electronic files of the actual CAD drawings, as well as PDF versions of said drawings.

- As previously noted, the Village's intent is to stage construction activities, initiating the remodeling of the original 1986 structure as soon as possible. Therefore, the Work above may be broken into Phase I and Phase II designs, if it seems appropriate or necessary to do so to facilitate the Village's construction schedule.

## **2. TERM OF AGREEMENT**

- 2.1 This Contract shall commence on the effective date stated above, and CONSULTANT is authorized to commence performance of any tasks issued as of that date.
- 2.2 Time is of the essence with regard to the performance of the Contracted Services, and CONSULTANT shall complete any Contracted Services as soon as possible after requested.

## **3. COMPENSATION AND PAYMENT**

- 3.1 As compensation for the performance of the Contracted Services ("Compensation"), VILLAGE will pay CONSULTANT for time submitted, detailed and documented on each invoice, in accordance with the hourly rates for services attached hereto as Exhibit \_\_\_\_, and made a part of this Contract by reference.
- 3.2 VILLAGE shall have no liability for any other expenses or costs incurred by CONSULTANT other than those agreed to and expressly set forth in the rate sheet attached.
- 3.3 Invoices requesting payment for completed work shall be submitted by CONSULTANT to VILLAGE once each month on a date specified by VILLAGE.

## **4. LIEN WAIVER**

- 4.1 CONSULTANT shall promptly pay for all services, labor, materials and equipment used or employed by CONSULTANT in the performance of the Contracted Services and shall maintain all materials, equipment, structures, buildings, premises and property of VILLAGE free and clear of mechanic's or other liens.
- 4.2 CONSULTANT shall, if requested, provide VILLAGE with reasonable evidence that all services, labor, materials and equipment have been paid in full.

## **5. INDEPENDENT CONSULTANT**

- 5.1 For purposes of this Contract, CONSULTANT is an independent CONSULTANT and shall not be deemed to be an employee, agent or joint venturer of VILLAGE.
- 5.2 CONSULTANT shall be solely responsible for the means and methods for carrying out the Contracted Services.

## **6. COMPLIANCE WITH THE LAW**

- 6.1 CONSULTANT shall comply with all applicable statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and all other requirements of any and all governmental or judicial entities that have jurisdiction over the Contracted Services ("Law").

## **7. PERMITS AND LICENSES**

- 7.1 CONSULTANT will obtain, pay for, and maintain all permits and licenses, registrations, qualifications, and other governmental authorizations required by law that are associated with CONSULTANT's performance of Contracted Services.

## **8. STANDARD OF PERFORMANCE**

- 8.1 CONSULTANT shall perform the Contracted Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the St. Louis, MO metropolitan region.
- 8.2 CONSULTANT shall provide additional services as needed to correct any defects or deficiencies in the Contracted Services and shall bear all costs related to the correction of CONSULTANT's or its subconsultants' defective or deficient performance at no additional cost to VILLAGE.

## **9. HEALTH & SAFETY**

- 9.1 CONSULTANT shall take appropriate precautions to protect and shall be solely and continuously responsible for the health, safety and welfare associated with its employees, subconsultants, agents and those persons under the supervision and control of CONSULTANT with the performance of the Contracted Services.
- 9.2 CONSULTANT's employees, agents and the employees of its subconsultants who perform the Contracted Services shall be experienced and properly trained to perform the Contracted Services under such conditions and shall take adequate precautions to protect human health and the environment in the performance of the Contracted Services.
- 9.3 In the event that CONSULTANT observes a potentially hazardous condition relating to the Contracted Services, CONSULTANT shall immediately bring such condition to the attention of VILLAGE.

## **10. CONTACT WITH REGULATORY AGENCIES**

- 10.1 Should CONSULTANT communicate directly with applicable governmental regulatory agencies with regard to the Contracted Services it shall refrain from representing any policy, position or decision as being the official policy, position or decision of VILLAGE, unless expressly stated by VILLAGE. Whenever the official policy, positions or decisions of VILLAGE are unstated or unknown to CONSULTANT, CONSULTANT shall direct inquiries from governmental regulatory agencies to VILLAGE for appropriate response.

## **11. QUALITY CONTROL**

- 11.1 Regardless of any review by VILLAGE, CONSULTANT shall be responsible for quality control, for its work products and activities, and for the quality of the Contracted Services.

## **12. SUSPENSION OF SERVICES**

- 12.1 VILLAGE may, at any time, with or without cause, suspend all or any portion of the Contracted Services for a period of up to 90 days ("Suspended Services").

- 12.2 CONSULTANT shall immediately stop the performance of the Suspended Services, until such time as VILLAGE issues direction to CONSULTANT to resume the Suspended Services.
- 12.3 CONSULTANT shall take such action as is reasonably necessary to protect the Suspended Services and take such additional action as directed by VILLAGE.

### **13. FORCE MAJEURE**

- 13.1 VILLAGE shall not be responsible for delay in the performance of its obligations under this Contract caused by a force majeure event. To the extent that Contracted Services are delayed by a force majeure event, CONSULTANT will be entitled to an equitable adjustment. For purposes of this Contract, a “force majeure event” is an occurrence or circumstance beyond the control of the claiming party and may include, but is not limited to extraordinary weather conditions, or other natural catastrophes, acts of God, war, riots, strikes, lockouts, or other industrial disturbances or acts of any governmental agencies.

### **14. TERMINATION FOR CONVENIENCE**

- 14.1 All or part of this Contract may be terminated by VILLAGE for its convenience.
- 14.2 In any such event, CONSULTANT will be entitled to Compensation for Contracted Services performed up to the date of termination. CONSULTANT shall not be entitled to compensation or profit for Contracted Services not performed.

### **15. TERMINATION FOR DEFAULT**

- 15.1 VILLAGE may at any time, by written notice, terminate the whole or any part of this Contract for default (“Termination for Default”) upon failure of CONSULTANT to promptly cure such default in such time as VILLAGE may reasonably allow. For the purposes of this Contract, default includes but is not limited to:
- A. Failure to strictly adhere to the terms and conditions of this Contract;
  - B. Failure to maintain progress so as to endanger proper performance of the Contracted Services; or
  - C. Failure to maintain adequate financial or legal capacity to properly complete the Contracted Services.
- 15.2 In the event of Termination for Default, CONSULTANT will be compensated for the Contracted Services properly performed prior to such termination for default.
- 15.3 VILLAGE may withhold any outstanding Compensation otherwise due to CONSULTANT pending final completion and acceptance of the Contracted Services and an accounting of related costs. In the event that the withheld amount exceeds the damages associated with CONSULTANT’s default, VILLAGE shall promptly pay such excess funds to CONSULTANT. In the event the damages associated with CONSULTANT’s default exceeds the amount withheld, the VILLAGE shall retain the entire amount that was withheld and CONSULTANT shall promptly pay VILLAGE the amount equal to the excess within 3 days of VILLAGE’s written demand for such payment.
- 15.4 If, after notice of Termination for Default, it is determined for any reason that CONSULTANT was not in default, the rights and obligations of the parties shall be the

same as if the notice of termination had been issued pursuant to Termination for Convenience.

## 16. INSURANCE

16.1 CONSULTANT shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

16.2 Minimum Scope of Insurance - Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability Occurrence Form CG 0001 10 01 with VILLAGE named as additional insured, on forms at least as broad as the ISO Additional Insured Endorsements CG 20 10 10 01 AND CG 20 37 10 01.
- B. Insurance Service Office Business Auto Liability coverage form number CA 00 01 10 01, Symbol 01 "Any Auto."
- C. Workers' Compensation as required by the Workers' Compensation Act of the State of Illinois and Employers' Liability insurance.

16.3 Minimum Limits of Insurance

- A. CONSULTANT shall maintain limits no less than the following:
  - 1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, and property damage and \$1,000,000 per occurrence for personal injury. The general aggregate shall be twice the required occurrence limit. Minimum General Aggregate shall be no less than \$2,000,000 or a project-contract specific aggregate of \$1,000,000.
  - 2. Business Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - 3. Workers' Compensation and Employers' Liability: Workers' Compensation Coverage with statutory limits and Employers' Liability limits of \$500,000 per accident.
- B. Deductibles and Self-Insured Retentions
  - 1. Any deductibles or self-insured retentions must be declared to and approved by VILLAGE. Should VILLAGE determine that either renders the insurance inadequate, at the option of VILLAGE, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects VILLAGE, its officials, agents, employees and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.
- C. Other Insurance Provisions - The policies are to contain, or be endorsed to contain, the following provisions:
  - 1. General Liability and Automobile Liability Coverages
    - a. VILLAGE, its officials, agents, employees and volunteers are to be covered as additional insured as respects: liability arising out of CONSULTANT's work, including activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned,

leased or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to VILLAGE, its officials, agents, employees and volunteers.

- b. CONSULTANT's insurance coverage shall be primary as respects VILLAGE, its officials, agents, employees and volunteers. Any insurance or self-insurance maintained by VILLAGE, its officials, agents, employees and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to VILLAGE, its officials, agents, employees and volunteers.
  - d. CONSULTANT's insurance shall contain a Severability of Interests/Cross Liability clause or language stating that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's ability.
  - e. If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form," then CONSULTANT shall be required to name VILLAGE, its officials, agents, employees and volunteers as additional insureds.
  - f. All general liability coverages shall be provided on an occurrence policy form. Claims-made general liability policies will not be accepted.
2. Workers' Compensation and Employers' Liability Coverage
- g. The insurer shall agree to waive all rights of subrogation against VILLAGE, its officials, agents, employees and volunteers for losses arising from work performed by CONSULTANT for VILLAGE.
  - a. CONSULTANT agrees to a waiver of any Kotecki limitation in relation to work performed by CONSULTANT's employees on VILLAGE projects.
3. Professional Liability
- a. Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors and omissions in connection with professional services to be provided under the contract, with a deductible not to exceed \$50,000 without prior written approval.
  - b. If the policy is written on a claims-made form, the retroactive date must be equal to or preceding the effective date of the contract. In the event the policy is cancelled, non-renewed or switched to an occurrence form, CONSULTANT shall be required to purchase supplemental extending reporting period coverage for a period of not less than three (3) years.
  - c. Professional liability insurance that provides indemnification and defense for injury or damage arising out of acts, errors, or omissions in providing the following professional services, but not limited to the following:
    - 1) Preparing, approving, or failure to prepare or approve maps, drawings, opinions, report, surveys, change orders, designs or specifications;

- 2) Providing direction, instruction, supervision, inspection, architectural services or failing to provide them, if that is the primary cause of injury or damage.

#### 4. All Coverages

- a. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to VILLAGE.

#### D. Acceptability of Insurers

1. Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and licensed to do business in the State of Illinois.

#### E. Verification of Coverage

1. Other than for Professional Liability Insurance, CONSULTANT shall furnish VILLAGE with certificates of insurance naming VILLAGE, its officials, agents, employees and volunteers as additional insureds, and with original endorsements affecting coverage required by this clause.
2. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements shall be on ISO Additional Insured Endorsement forms CG 20 10 10 01 AND CG 20 37 10 01 and are to be received and approved by VILLAGE before any work commences. Other additional insured endorsements may be considered, if they provide a scope of coverage at least as broad as the coverage stated in the above endorsements. VILLAGE reserves the right to request full certified copies of the insurance policies and endorsements.

#### F. Subcontractors

1. CONSULTANT shall include any subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 17. INDEMNITY

17.1 To the fullest extent permitted by law, CONSULTANT hereby agrees to defend, indemnify and hold harmless VILLAGE, its officials, agents and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, cost and expenses, which may in anywise accrue against VILLAGE, its officials, agents and employees, to the extent that any such loss is caused by the negligent act, error or omission of CONSULTANT, or anyone for whom CONSULTANT is legally liable, and 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 connections therewith, and, if any judgment shall be rendered against VILLAGE, its officials, agents and employees, in any such action, CONSULTANT shall, at its own expense, satisfy and discharge the same.

17.2 CONSULTANT is not obligated to indemnify VILLAGE in any manner whatsoever for VILLAGE's own negligence. In the event claims, losses, damages or expenses are

caused by the joint or concurrent negligence of both of CONSULTANT and VILLAGE, they shall be borne by each party in proportion to each party's negligence.

17.3 CONSULTANT expressly understands and agrees that any performance bond or insurance policies required by this contract, or otherwise provided by CONSULTANT, shall in no way limit the responsibility to indemnify, keep and save harmless and defend VILLAGE, its officials, agents and employees as herein provided.

17.4 CONSULTANT further agrees that, to the extent that money is due CONSULTANT pursuant to this Agreement, VILLAGE may, in its sole and absolute discretion, to protect itself against said loss until such claims, suits, or judgments, may retain such money until such time that all claims, suits or judgments have been settled or discharged and evidence to that effect has been furnished to the satisfaction of VILLAGE.

## **18. INFRINGEMENT**

18.1 CONSULTANT shall not infringe upon any intellectual property (including but not limited to patents, trademarks or copyrights) ("Intellectual Property") in the performance of this Contract. In the event that CONSULTANT is alleged to have infringed upon such Intellectual Property, in addition to CONSULTANT's obligations under the Indemnity provisions above, CONSULTANT shall, at the sole discretion of VILLAGE and at CONSULTANT's sole expense:

- A. Procure for VILLAGE the right to continue using the infringing subject matter;
- B. Replace or modify the infringing subject matter so that it becomes non-infringing but still complies with the requirements of the Contract; or
- C. Reimburse VILLAGE for all payments made to CONSULTANT relating to or impacted by the infringing material and all costs incurred by VILLAGE resulting from such infringement.

## **19. DISPUTES**

19.1 Any dispute related to this Contract shall be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The panel may meet or may conduct its discussions by telephone or other electronic means. In the event that the panel is unable to reach a mutual resolution of the dispute, or has failed to convene within two weeks of the request of either party, the matter may be referred by either party to a court of appropriate jurisdiction.

19.2 All communications between the parties or their representatives in connection with the attempted resolution of any dispute shall be confidential and deemed to have been delivered in furtherance of dispute settlement and shall be exempt from discovery and production, and shall not be admissible in evidence whether as an admission or otherwise, in any arbitration, judicial or other proceeding for the resolution of the dispute.

19.3 Pending any final judicial decision or settlement, CONSULTANT shall at the direction of VILLAGE, proceed diligently with the Contracted Services.

19.4 In the event that either party brings any suit, action or claim against the other for enforcement of this Agreement, the prevailing party in such suit, action or claim shall be entitled to its cost, including attorneys' fees incurred in such suit, action or claim.

## **20. NOTICE**

20.1 Any notice or communication required or permitted by this Contract shall be deemed sufficiently given if in writing and when delivered personally or upon receipt of registered or certified mail, postage prepaid with the U.S. Postal Service, and addressed as follows:

IF TO VILLAGE:

Village of Swansea  
Attn: Village Administrator  
1444 Boul Avenue  
Swansea, Illinois 62226

IF TO CONSULTANT:

AAA  
Attn:  
BBB  
CCC

or to such other address as the party to whom notice is to be given has furnished by the receiving party in writing.

## **21. REMEDIES**

21.1 No remedies or rights conferred upon VILLAGE by this Contract are intended to be exclusive of any remedy or right provided by law or equity, but each shall be cumulative and shall be in addition to every other remedy or right given herein or now or hereafter existing at law or in equity.

## **22. CONFIDENTIAL INFORMATION**

22.1 Any information or data disclosed by VILLAGE or otherwise developed or obtained under this Contract and deemed by VILLAGE to be proprietary or confidential shall be treated by CONSULTANT as such.

22.2 CONSULTANT shall not disclose Confidential Information without VILLAGE's written consent. Those persons under CONSULTANT's control shall not use Confidential Information for any purpose other than for the proper performance of the Contracted Services.

22.3 CONSULTANT's obligations under this Article shall not apply to Confidential Information that is:

- A. In the public domain without breach of this Contract;
- B. Developed independently by CONSULTANT;
- C. Received by CONSULTANT on a non-confidential basis from others who had a right to disclosure such Confidential Information; or

D. Required to be disclosed by Law, but only after actual prior written notice has been received by VILLAGE and VILLAGE has had a reasonable opportunity to protect disclosure of such Confidential Information.

22.4 CONSULTANT shall ensure that the foregoing obligations of confidentiality and use also extend and bind the employees and agents of CONSULTANT and its subconsultants who have been provided access to the Confidential Information under this Contract.

### **23. RIGHTS IN DATA**

23.1 CONSULTANT agrees that VILLAGE, by way of payment for services performed by CONSULTANT, retains rights in all data and information disclosed, obtained, developed or produced by CONSULTANT under this Contract ("Data"), and in all formats, including electronic.

23.2 CONSULTANT shall promptly deliver any such Data to VILLAGE as requested by VILLAGE. CONSULTANT shall be fully responsible for the care, protection and preservation of the Data until such delivery. CONSULTANT may retain copies of the Data for CONSULTANT's archives subject to CONSULTANT's continued compliance with the provisions of this Article.

23.3 CONSULTANT agrees not to assert, or to allow persons performing under CONSULTANT's control to assert, any rights to Data that would infringe upon VILLAGE's rights, including establishing any claim under design, patent or copyright laws.

23.4 Except as otherwise provided in this Contract, said Data shall be delivered to VILLAGE without additional cost to VILLAGE.

### **24. COMPLIANCE WITH FREEDOM OF INFORMATION ACT REQUEST**

24.1 The Illinois Freedom of Information Act (FOIA), effective January 1, 2010, and as amended from time to time, adds a new provision to Section 7 of the Act which applies to public records in the possession of a party with whom VILLAGE has contracted. VILLAGE will have only a very short period of time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information. The undersigned acknowledges the requirements of FOIA and agrees to comply with all requests made for public records (as that term is defined by Section 2(c) of FOIA) in CONSULTANT's possession but not in VILLAGE's, and to provide said requested public records to VILLAGE within two (2) business days of the request being relayed by VILLAGE.

### **25. SURVIVAL OF TERMS**

25.1 Articles on Indemnity, Confidential Information and Rights in Data shall survive termination of this Contract.

### **26. ASSIGNMENT AND CONTRACTING**

26.1 CONSULTANT shall not assign or contract this Contract nor any rights or obligations herein without the prior written consent of VILLAGE. In the event this Contract is assigned or contracted by CONSULTANT, CONSULTANT shall remain responsible to VILLAGE for the proper performance of CONSULTANT's obligations under this Contract.

26.2 The terms and conditions of CONSULTANT's contracts or assignments under this Contract shall, at a minimum, require CONSULTANT or assignee to fully comply with this Contract unless otherwise authorized in writing by VILLAGE.

## **27. AMENDMENT AND WAIVER**

27.1 This Contract may only be modified by written amendment, executed by both parties. Either party may waive any provision of this Contract to the extent such provision is for the benefit of such waiving party.

27.2 No action taken pursuant to this Contract shall be deemed to constitute a waiver by that party of its or the other party's compliance with any representations or warranties or with any other provision of this Contract.

27.3 No waiver by either party of a breach of any provision of this Contract shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by the other party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

## **28. SEVERABILITY**

28.1 The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions, and this Contract shall be construed in all respects as if any invalid or unenforceable provision were omitted.

## **29. GOVERNING LAW**

29.1 The validity, construction and performance of this Contract and all disputes between the parties arising out of or related to this Contract shall be governed by the laws, without regard to the law as to choice or conflict of law, of the State of Illinois.

## **30. VENUE, JURISDICTION AND SERVICE OF PROCESS**

30.1 The parties agree that any suit, action or proceeding arising out of or related to this Contract shall be instituted in the Illinois Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, and each party irrevocably submits to the jurisdiction of that court and waives any and all objections to jurisdiction or venue that it may have under the laws of the State of Illinois or otherwise in those courts in any such suit, action, or proceeding.

## **31. NO COLLUSION**

31.1 CONSULTANT represents and certifies that CONSULTANT is not barred from contracting with a unit of state or local government as a result of

A. A delinquency in the payment of any tax administered by the Illinois Department of Revenue unless CONSULTANT is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42. 1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42. 1-1 et seq.; or

B. A violation of either Section 33E-3 or Section 33E-4 or Article 33E of the Criminal Code of 1961, 720 ILCS 5/22E-1 et seq.

- 31.2 CONSULTANT represents that this Contract is made without collusion with any other person, firm, or corporation.
- 31.3 If at any time it shall be found that CONSULTANT has, in procuring this Contract, colluded with any other person, firm, or corporation, then CONSULTANT shall be liable to VILLAGE for all loss or damage that VILLAGE may suffer, and this Contract shall, at VILLAGE's option, be null and void.

### **32. CHANGE ORDERS**

- 32.1 VILLAGE may, from time to time, order modifications or changes in the scope of the Contracted Services, doing so by written change order. In addition, Change Orders may be requested by CONSULTANT based upon material changes to the Contracted Services. Change Orders shall consist of additions to, deletions from or other revisions to the Contracted Services. Within 10 days after the date of such Change Order or material change, and in any event prior to the commencement of such revised Contracted Services, CONSULTANT shall notify VILLAGE in writing if CONSULTANT requests a change in the Compensation and/or Project Schedule and shall clearly state CONSULTANT's justification for the Change Order. If approved by VILLAGE, an equitable adjustment will be made as appropriate.
- 32.2 FAILURE OF CONSULTANT TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE SHALL CONSTITUTE A WAIVER OF SUCH CLAIM BY CONSULTANT.
- 32.3 Failure of the parties to agree on whether the Change Order constitutes a compensable change to the Compensation or should result in a change in the Project Schedule shall be subject to the Disputes provisions of this Contract. CONSULTANT shall diligently proceed with the Contracted Services as directed by VILLAGE, including any directed changes or potential changes in the Contracted Services, pending resolution of such Dispute.

### **33. ENTIRE AGREEMENT**

- 33.1 This Contract embodies the entire agreement and understanding between the parties pertaining to the subject matter of this Contract, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter.
- 33.2 The attached Task Order Sample Format is hereby made part of this agreement:

**34. SIGNATURES**

The undersigned parties have caused this Contract to be executed effective on the \_\_\_\_ th day of February, 2018, by their duly designated officials, as authorized by their respective governing bodies.

**VILLAGE OF SWANSEA, ILLINOIS**

**CONSULTANT NAME HERE**

\_\_\_\_\_  
BY: Michael W. Leopold  
TITLE: Mayor

\_\_\_\_\_  
BY:  
TITLE:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
BY: Lauren O'Neill, Village Clerk

**ATTEST:** \_\_\_\_\_  
BY:

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 10 01

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**A. Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

**B.** With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**SAMPLE**

CG 20 10 10 01

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Page 1 of 1 □

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 37 10 01

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name of Person or Organization:</b>
<b>Location And Description of Completed Operations:</b>
<b>Additional Premium:</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

SAMPLE