

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of April, 2017, between the Village of Oak Park, Illinois, an Illinois home rule municipal corporation (hereinafter referred to as "Village"), and Sikich LLP ("hereinafter referred to as "Consultant").

WHEREAS, the Village has determined that it is desirable to obtain temporary accounting and financial reporting services ("Services"); and

WHEREAS, on April 3, 2017, the Consultant submitted an Engagement Letter to provide such Services, a copy of which is attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. RECITALS

- 1.1. The above recitals are substantive and are incorporated herein by reference.

SECTION 2. SERVICES OF THE CONSULTANT

2.1. The Consultant shall perform all of the Services as more completely set forth in the Consultant's Engagement Letter. The Services shall be provided by the Consultant's employee, Rebekah Flakus, at the rate of \$100 per hour. The Consultant shall be responsible for all expense of its employee in providing the Services herein.

2.2. The Village reserves the right to reject any substitute employee of the Consultant should Ms. Flakus be unable to complete the Services through the term of this Agreement as set forth in Section 4.1 of this Agreement below.

2.3. In case of a conflict between provisions of the Consultant's Engagement Letter and this Agreement, this Agreement shall control to the extent of such conflict.

2.4. Village Authorized Representative. The Village's Chief Financial Officer or the Chief Financial Officer's designee shall be deemed the Village's authorized representative, unless applicable law requires action by the Corporate Authorities, and shall have the power and authority to make or grant or do those things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by this Agreement. The Consultant is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Village as having been properly and legally given by the Village. The Village shall have the right to change its authorized Village representative by providing the Consultant with written notice of such change which notice shall be served in accordance with Section 18 of this Agreement.

2.5. Consultant's Authorized Representative. In connection with the foregoing and other actions to be taken under this Agreement, the Consultant hereby designates Daniel A. Berg, Partner as its authorized representative who shall have the power and authority to make or grant or do all things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Consultant and with the effect of binding the Consultant. The Village is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Consultant as having been properly and legally given by the Consultant. The Consultant shall have the right to change its authorized representative by providing the Village with written notice of such change in accordance with Section 18 of this Agreement.

SECTION 3. COMPENSATION FOR SERVICES

3.1. The Village shall compensate the Consultant for the Services in an amount not to exceed \$65,000.00 ("Contract Price"). The Consultant shall be paid installments not more frequently than once each month ("Progress Payments"). Payments shall be made within thirty (30) days of receipt by the Village of a pay request/invoice from the Consultant. Payments shall be due and owing by the Village in accordance with the terms and provisions of the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*, except as set forth herein.

3.2. The Village and Consultant may, at any time, by written agreement, make changes within the general scope of this Agreement in the Services to be performed by the Consultant. If such changes cause an increase or decrease in the amount to be paid to the Consultant or time required for performance of any Services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. No service for which additional compensation will be charged by the Consultant shall be furnished without the written authorization of the Village.

SECTION 4. TERM AND TERMINATION

4.1. This Agreement shall take effect on May 1, 2017 and expire on October 27, 2017, or upon the effective date of its termination, whichever occurs first.

4.2. This Agreement may be terminated, in whole or in part, by either party if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. Either party may terminate this Agreement, in whole or in part, for its convenience. No such termination may be effected unless the terminating party gives the other party (1) not less than ten (10) calendar days' written notice pursuant to Section 18 below of its intent to terminate.

4.3. If this Agreement is terminated by either party, the Consultant shall be paid for Services performed to the effective date of termination, including reimbursable expenses. In the event of termination, the Village shall receive reproducible copies of drawings, specifications and other documents completed by the Consultant pursuant to this Agreement.

SECTION 5. INDEMNIFICATION

5.1. The Consultant shall, without regard to the availability or unavailability of any insurance, either of the Village or Consultant, indemnify, save harmless, and defend the Village, its officers, officials, employees, agents and volunteers against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including reasonable attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Consultant, but in all instances only to the extent such lawsuits, claims, demands, damages, liabilities, losses or expenses are caused by the negligence of the Consultant or its subconsultants or their respective employees.

SECTION 6. INSURANCE

6.1. The Consultant shall, at the Consultant's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits set forth in this Section 6. The Consultant shall furnish Certificates of Insurance to the Village before starting work or within ten (10) days after the notice of award of the Agreement, which ever date is reached first. All insurance policies, except professional liability insurance, shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of at least A according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days' prior written notice is given to the Village. This provision shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the Consultant shall mail fifteen (15) days' written notice to the certificate holder named to the left." The Consultant shall require any of its subconsultants to secure and maintain insurance as set forth in this Section 6 and indemnify, hold harmless and defend the Village, its officers, officials, employees, attorneys and volunteers as set forth in this Agreement.

6.2. The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(A) Commercial General Liability:

- i. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00
- iii. Cover all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant.

(B) **Professional Liability:**

- i. Limits:

General Aggregate	\$2,000,000.00
Per Claim	\$2,000,000.00
- ii. Coverage for all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant, and the Consultant's obligations under the indemnification provisions of this Agreement to the extent same are covered.

(C) **Workers' Compensation:**

- i. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who work on the Project, and in case work is sublet, the Consultant shall require each subconsultant similarly to provide workers' compensation insurance. In case employees engaged in hazardous work under this Agreement are not protected under Illinois Workers' Compensation Act, the Consultant shall provide, and shall cause each subconsultant to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(D) **Comprehensive Automobile Liability:**

- i. Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage.
- ii. Limits:

Combined Single Limit	\$1,000,000.00
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(E) **Umbrella:**

- i. Limits:

Each Occurrence/Aggregate	\$2,000,000.00
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- (F) The Village, its officers, officials, employees, agents and volunteers shall be named as an additional insured on all insurance policies identified herein except workers' compensation and professional liability. The Consultant shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, officials, employees, agents, and volunteers.

6.3. The Village and the Consultant agree to waive against each other all claims for special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.4. The Consultant understands and agrees that, except as to professional liability, any insurance protection required by this Agreement or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village, its officers, officials, employees, agents and volunteers as herein provided. Consultant waives and shall have its insurers waive, its rights of subrogation against the Village, its officers, officials, employees, agents and volunteers.

SECTION 7. SUCCESSORS AND ASSIGNS

7.1. The Village and the Consultant each bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Except as above, neither the Village nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may not be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Village and the Consultant.

SECTION 8. AMENDMENTS AND MODIFICATIONS

8.1. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of the Consultant.

SECTION 9. STANDARD OF CARE

9.1. The Consultant shall endeavor to perform the Services with the same skill and judgment which can be reasonably expected from similarly situated professionals.

9.2. The Consultant shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

9.3. The Consultant shall ensure that the Services are provided, performed, and completed in accordance with all applicable statutes, ordinances, rules, and regulations, including, but not limited to, the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all

conditions of any federal, state, or local grant received by the Village or the Consultant with respect to this Agreement which has been provided to Consultant in writing in advance.

SECTION 10. DOCUMENTS AND BOOKS AND RECORDS

10.1. Drawings, plans, specifications, photos, reports, information, observations, calculations, notes and any other reports, documents, data or information, in any form, prepared, collected, or received by the Consultant in connection with any or all of the Services to be provided pursuant to this Agreement ("Documents") shall be and remain the property of the Village upon completion of the Services and payment to the Consultant all amounts then due under this Agreement. The Consultant shall have the right to retain copies of the Documents for its files that do not contain confidential information as deemed by the Village pursuant to Section 11.2 below. The Consultant shall maintain files of all Documents unless the Village shall consent in writing to the destruction of the Documents, as required herein.

10.2. The Documents and records prepared by the Consultant pursuant to this Agreement shall be maintained and made available during performance of the Services under this Agreement and for three (3) years after completion of the Project. The Consultant and any subconsultants shall maintain for a minimum of three (3) years after the completion of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the Agreement. The Agreement and all books, records and supporting documents related to the Agreement shall be available for review and audit by the Village and the federal funding entity, if applicable, and the Consultant agrees to cooperate fully with any audit conducted by the Village and to provide full access to all materials. Failure to maintain the books, records and supporting documents required by this subsection shall establish a presumption in favor of the Village for recovery of any funds paid by the Village under the Agreement for which adequate books, records and supporting documentation are not available to support their purported disbursement. The Consultant shall make the Documents available for the Village's review, inspection and audit during the entire term of this Agreement and three (3) years after completion of the Project as set forth herein.

10.3. The Consultant shall furnish all records related to this Agreement and any documentation related to the Village required under an Illinois Freedom of Information Act (ILCS 140/1 et. seq.) ("FOIA") request within five (5) business days after the Village issues notice of such request to the Consultant. The Consultant shall not apply any costs or charge any fees to the Village regarding the procurement of records required pursuant to a FOIA request. Should the Consultant request that the Village utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, the Consultant agrees to pay all costs connected therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction.

SECTION 11. CONFIDENTIAL INFORMATION

11.1. All information, documents, records and other materials supplied by the Village to the Consultant for or in connection with this Agreement and the Services to be provided by the Consultant shall be held confidential by Consultant and shall not, without the prior express written consent of the Village, be disclosed for any purpose other than the performance of the Services or as otherwise authorized by this Agreement, unless otherwise required by law.

11.2. All information, documents, records and other materials provided by the Village to the Consultant pursuant to Section 11.1 above that the Village deems confidential shall be returned to the Village upon Consultant's completion of the Services pursuant to this Agreement or destroyed by the Consultant. The Consultant shall use exercise commercially reasonable efforts to destroy electronic data that the Village has deemed confidential.

SECTION 12. SAVINGS CLAUSE

12.1. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

SECTION 13. NON-WAIVER OF RIGHTS

13.1. No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

13.2. This Agreement shall not prohibit the Consultant from providing Services to any other public or private entity or person. In the event that the Consultant provides Services to a public or private entity or person, the Village, at its sole discretion, may determine that such Services conflict with a service to be provided to the Village by Consultant, and the Village may select another entity to provide such Services as the Village deems appropriate.

SECTION 14. NO COLLUSION

15.1. The Consultant hereby represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) 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 65 ILCS 5/11-42.1-1; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant hereby represents that the only persons, firms, or corporations

interested in this Agreement are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Consultant has in procuring this Agreement, colluded with any other person, firm, or corporation with no involvement by any Village agent, employee, officer, trustee or board member, then the Consultant shall be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement shall, at the Village's option, be null and void and subject to termination by the Village.

SECTION 15. ENTIRE AGREEMENT

15.1. This Agreement and the Engagement Letter sets forth all the covenants, conditions and promises between the parties, and it supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement or the Engagement Letter.

SECTION 16. INDEPENDENT CONTRACTOR

16.1. The Consultant and its employees are not employees of the Village, it being specifically agreed that the Consultant bears the relationship of an independent contractor to the Village. The Consultant shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the Services pursuant to this Agreement.

SECTION 17. GOVERNING LAW

17.1. This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance without regard to conflicts of laws principles.

SECTION 18. NOTICE

18.1. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, personal service, facsimile or electronic transmission to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

If to the Village:

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Fax: (708) 358-5101
Email: villagemanager@oak-park.us

If to the Consultant:

Daniel A. Berg, Partner
Sikich LLP
1415 W. Diehl Road, Suite 400
Naperville, Illinois 60563
Fax: (630) 236-4665
Email: dberg@sikich.com

18.2. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

18.3. Notice by facsimile or electronic transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event facsimile notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

SECTION 19. BINDING AUTHORITY

19.1. The individuals executing this Agreement on behalf of the Consultant and the Village represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

SECTION 20. HEADINGS AND TITLES

20.1. The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

SECTION 21. COUNTERPARTS/FACSIMILE OR PDF/EMAIL SIGNATURES

21.1. This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement.

21.2. A facsimile or a pdf/email copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

SECTION 22. EQUAL OPPORTUNITY EMPLOYER

22.1. The Consultant is an equal opportunity employer and the requirements of 44 Ill. Adm. Code 750 APPENDIX A are incorporated herein as applicable.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

VILLAGE OF OAK PARK

SIKICH LLP

By: Cara Pavlicek
Its: Village Manager

By:
Its:

Date: _____, 2017

Date: _____, 2017

ATTEST

ATTEST

By: Teresa Powell
Its: Village Clerk

By:
Its:

Date: _____, 2017

Date: _____, 2017