

## **INDEPENDENT CONTRACTOR AGREEMENT**

**THIS INDEPENDENT CONTRACTOR AGREEMENT** ("Agreement") is entered into on the \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter the "Village"), and Forward Space, LLC, d/b/a Office Concepts, an Illinois limited liability company (hereafter the "Contractor").

**WHEREAS**, Contractor has submitted a Price Proposal to purchase and install carpet, certain new furniture and related coordination and design services for Part 3 of Phase III of the Village Hall Remodeling Project (hereinafter referred to as "Services"), incorporated herein by reference as though fully set forth, pursuant to its Proposal for the Project dated July 14, 2014 (hereinafter referred to as "Proposal"), also incorporated herein by reference as though fully set forth, wherein Contractor represented that it has the necessary personnel, experience, and competence to promptly complete the Services and the work required hereunder; and

**WHEREAS**, it is the intent of the Village and Contractor that Contractor shall perform the Services pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises contained in this Agreement, and other good and valuable consideration received and to be received, it is mutually agreed by and between the parties as follows:

**1. RECITALS INCORPORATED**

The above recitals are incorporated herein as though fully set forth.

**2. SCOPE OF WORK**

Contractor shall perform the Services in accordance with its Proposal for a not-to-exceed amount of \$190,000.00 ("Contract Sum"). Contractor hereby represents and warrants that it has the skill and experience necessary to the Services in a good and workmanlike manner. Contractor shall designate in writing a person to act as its designated representative with respect to the Services to be performed under this Agreement. Such person shall have complete authority to transmit and receive instructions and information, interpret and define Contractor's policies and decisions with respect to the services covered by this Agreement. The Village Manager or the Village Manager's designee shall have complete authority to transmit and receive instructions and information, interpret and define the Village's policies and decisions with respect to the Services covered by this Agreement, or such other person as designated in writing by the Village Manager.

### **3. TERM OF AGREEMENT**

Contractor shall perform the Services pursuant to this Agreement and shall complete said Services by December 31, 2017. The Village shall have the right to approve all key personnel assigned to the project by the Contractor prior to starting work. Contractor shall invoice the Village for the Services provided pursuant to this Agreement at the rates set forth in its Proposal. The term of this Agreement may be extended in writing for additional periods of time pursuant to the Agreement of the parties.

### **4. PAYMENT SCHEDULE**

Contractor shall, as a condition precedent to its right to receive any payment, submit to the Village an application for payment and such receipts, vouchers, and other documents as may be necessary to establish Contractor's payment for all labor and material and the absence of any interest whether in the nature of a lien or otherwise of any party in any property, work, or fund with respect to the Work performed hereunder. Such documents shall include, where relevant, the following forms:

- (i) Contractor's sworn statement;
- (ii) Contractor's partial or final waiver of lien;
- (iii) Subcontractor's sworn statement(s); and
- (iv) Subcontractor's partial or final waiver of lien.

Payment by the Village shall be conditioned upon an inspection by the Village of the work completed and submission of required waivers by Contractor. Payment by the Village shall in no way constitute a waiver of, or relieve Contractor from, any defects in the work. All payments shall be made in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* Final payment for any services performed by Contractor pursuant to an invoice by Contractor shall be made by the Village to Contractor when Contractor has fully performed the work and the work has been approved by the Village and submission of required waivers and paperwork by Contractor. Approval of the work and issuance of the final payment by the Village shall not constitute a waiver of, or release Contractor from, any defects in the work.

The Village shall have the right to withhold from any payment due hereunder such amount as may reasonably appear necessary to compensate the Village for any actual or prospective loss due to work which is defective or does not conform to the Contract Documents; damage for which Contractor is liable hereunder; liens or claims of liens; claims of third parties, subcontractors, or material men; or any failure of Contractor to perform any of its obligations under this Agreement. The Village may apply any money withheld or due Contractor hereunder to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, and attorney's fees incurred, suffered, or sustained by the Village and chargeable to Contractor.

## **5. TERMINATION**

The Village may terminate this Agreement for cause, which includes but is not necessarily limited to, Contractor's failure to perform the work pursuant to this Agreement. The Village shall provide Contractor with five (5) days' written notice of a termination for cause pursuant to the provisions of Section 12 below. The Village may also terminate this Agreement when it determines the same to be in its best interests by giving fourteen (14) days' written notice to Contractor pursuant to the provisions of Section 12 below. In such event, the Village shall pay to Contractor all amounts due for the work performed up to the date of termination.

## **6. COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall comply with all applicable laws, regulations, and rules promulgated by any federal, state, county, municipal and/or other governmental unit or regulatory body now in effect during the performance of the work. By way of example only and not as a limitation, the following are included within the scope of the laws, regulations and rules with which Contractor must comply: all forms of worker's compensation laws, all terms of the equal employment opportunity rules and regulations of the Illinois Department of Human Rights, statutes relating to contracts let by units of government, and all applicable civil rights and anti-discrimination laws and regulations.

## **7. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall waive any right of contribution against the Village and shall indemnify and hold harmless the Village and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from the performance of Contractor's work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use resulting therefrom, or is attributable to misuse or improper use of trademark or copyright-protected material or otherwise protected intellectual property, to the extent it is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Village would otherwise have. Contractor shall similarly protect, indemnify and hold and save harmless, the Village, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provisions of this Agreement. The indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages,

compensation, or benefits payable by or for the Contractor or any subcontractor under worker's compensation or disability benefit acts or employee benefit acts.

## **8. INSURANCE**

Contractor shall, at the Contractor's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits. The Contractor shall furnish "Certificates of Insurance" to the Village before providing its Services pursuant to this Agreement. All insurance policies 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 issuing company shall mail fifteen (15) days written notice to the certificate holder named to the left."

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 Contractor's operations or premises, anyone directly or indirectly employed by the Contractor.

### **(B) Workers' Compensation:**

- i. Workers' compensation insurance shall be provided in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who provide the Services pursuant to this Agreement, and if work is subcontracted pursuant to the provisions of this Agreement, the Contractor shall require each subcontractor similarly to provide worker's compensation insurance. If employees engaged in hazardous work under this Agreement are not protected under the Workers' Compensation Act, Contractor shall provide, and shall cause each

subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(C) **Comprehensive Automobile Liability:**

i. Comprehensive Automobile Liability coverage shall 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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(D) **Umbrella:**

i. Limits:

Each Occurrence/Aggregate	\$ 2,000,000.00
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(E) The Village, its officers, officials, employees, agents and volunteers shall be named as additional insureds on all insurance policies set forth herein except Workers' Compensation. Contractor 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, employees, agents, and volunteers.

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

**9. GUARANTY**

Contractor warrants and guarantees that the Services to be performed under this Agreement, and all workmanship, materials, equipment, and supplies performed, furnished, used, or installed under this Agreement, performed, furnished, used, or installed under this Agreement, shall be free from defects and flaws in workmanship or design; shall strictly conform to the requirements of this Agreement; and shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement. Contractor further warrants and guarantees that the strength of all parts of all manufactured materials, equipment, and supplies shall be adequate and as specified and that the performance requirements of this Agreement shall be fulfilled.

Contractor shall, at no expense to the Village, correct any failure to fulfill the above guaranty that may appear at any time. In any event, the guaranty herein expressed shall not be sole and exclusive, and is additional to any other guaranty or warranty expressed or implied.

**10. AFFIDAVIT OR CERTIFICATE**

Contractor shall furnish any affidavit or certificate in connection with the work covered by this Agreement as required by law.

**11. AGREEMENT NON-EXCLUSIVE**

This Agreement is non-exclusive and the Village reserves the right to utilize other contractors to perform any or all of the Services set forth herein.

**12. NOTICES**

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, by email, facsimile or personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this Section:

**To the Village:**

Village Manager  
Village of Oak Park  
123 Madison Street  
Oak Park, Illinois 60302  
Fax: (708) 383-9584  
Email: [village\\_manger@oak-park.us](mailto:village_manger@oak-park.us)

**To Contractor:**

Jane Batchen  
Account Manager  
Forward Space, LLC  
13820 W. Business Center Dr.  
Lake Forest, Illinois 60045-1100  
Fax: (847) 673-8891  
Email: [jbatchen@fowardspace.com](mailto:jbatchen@fowardspace.com)

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.

**13. AUTHORITY TO EXECUTE**

The individuals executing this Agreement on behalf of Contractor 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.

**14. EFFECTIVE DATE**

The effective date of this Agreement as reflected above and below shall be the date that the Village Manager executes this Agreement on behalf of the Village.

**15. ENTIRE AGREEMENT; APPROVAL OF SUBCONTRACTOR AGREEMENT(S)**

This Agreement, including the documents incorporated by reference herein, sets forth the entire agreement of the parties with respect to the accomplishment of the Work. No right or interest in this Agreement shall be assigned, in whole or in part, by either party without the prior written consent of the other party. The Village reserves the right to approve the use of subcontractors to complete any portion of the Services and to approve any applicable contract between Contractor and a proposed subcontractor to perform any work. This Agreement shall be binding upon the parties and upon their respective heirs, executors, administrators, personal representatives, successors, and assigns, except as herein provided.

**16. INDEPENDENT CONTRACTOR**

Contractor shall have the full control of the ways and means of performing the work referred to above and that Contractor and its employees, representatives or subcontractors are not employees of the Village, it being specifically agreed that Contractor bears the relationship of an independent contractor to the Village. Contractor shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the Services.

**17. GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action pursuant to this Agreement shall be in the Circuit Court of Cook County, Illinois.

**18. AMENDMENTS AND MODIFICATIONS**

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 Contractor.

**19. NON-WAIVER OF RIGHTS**

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.

**20. HEADINGS AND TITLES**

The headings and titles provided in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

**21. COOPERATION OF THE PARTIES**

The Village and Contractor shall cooperate in the provision of the Services to be provided by Contractor pursuant to this Agreement and in compliance with applicable laws, including, but not limited to, the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.* Contractor shall provide any and all documents in response to a FOIA request at no charge to the Village.

**22. CONFLICT BETWEEN PROPOSAL AND AGREEMENT**

In case of a conflict between provisions of Contractor's Proposal this Agreement for the Services set forth herein, this Agreement shall control to the extent of such conflict.

**23. CONTRACT BOND**

Before commencing the work pursuant to this Agreement, Contractor shall furnish a Contract Bond if applicable in an amount equal to 100% of the full amount of the Contract Sum as security for the faithful performance of its obligations pursuant to this Agreement and as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bond shall be on standard AIA Documents, shall be issued by a surety satisfactory to the Village with a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency pursuant to the Public Construction Bond Act, 30 ILCS 550/0.01 *et seq.*, and shall name the Village as a primary co-obligee. The Contract Bond shall become a part of the Contract Documents. The failure of Contractor to supply the required Contract Bond within ten (10) days after the Notice of Award or within such extended period as the Village may grant if the Contract Bond does not meet its approval shall constitute a default, and the Village may either award the bid to the next lowest responsible proposer or re-advertise for proposals. A charge against Contractor may be made for the difference between the amount of Contractor's Proposal and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guarantee.



**24. PREVAILING WAGES**

Contractor and any applicable subcontractor(s) shall pay prevailing wages as established by the Illinois Department of Labor and determined by the Village pursuant to the Department of Labor's most recent determination of prevailing wages applicable to the Village for each craft or type of work needed to complete the Services pursuant to this Agreement in accordance with the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.* Contractor shall prominently post the current schedule of prevailing wages at the site of the work and shall notify immediately in writing all of its subcontractors of all changes in the schedule of prevailing wages. Any increases in costs to Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the sole expense of Contractor, and shall not result in an increase to the Contract Sum. Contractor shall be solely responsible to maintain accurate records as required by the Prevailing Wage Act and shall submit certified payroll records to the Village evidencing its compliance with the prevailing wage laws on no less than a monthly basis as required by Illinois law. Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the work for the Project. Contractor agrees to defend, indemnify and hold the Village harmless in connection with any claim arising from Contractor's failure to comply with the prevailing wage laws, including any expenses or attorneys' fees incurred by the Village in defense of such claims.

**25. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Contract. A facsimile or pdf copy of this Agreement and any signature(s) thereon will be considered for all purposes as an original.

**[REMAINDER OF 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**

**FORWARD SPACE, LLC, D/B/A  
OFFICE CONCEPTS**

\_\_\_\_\_  
By: Cara Pavlicek  
Its: Village Manager

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017

**ATTEST**

**ATTEST**

\_\_\_\_\_  
By: Vicki Scaman  
Its: Village Clerk

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017