

**VILLAGE OF SCHAUMBURG
PROFESSIONAL SERVICES AGREEMENT FOR
Salem Drive Improvements
Phase I Preliminary Design Engineering**

THIS AGREEMENT is dated as of the ____ day of _____, 20__ ("**Agreement**") and is by and between the **VILLAGE OF SCHAUMBURG**, an Illinois municipal corporation ("**Village**") and the Consultant identified in Subsection 1A below.

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in the Agreement, and pursuant to the Village's statutory powers, the parties agree as follows:

SECTION 1. CONSULTANT.

A. Engagement of Consultant. The Village desires to engage the Consultant identified below to provide all necessary professional consulting services and to perform the work in connection with the project identified below:

Consultant Firm Name: Hampton, Lenzini and Renwick, Inc. (HLR)
Street Address: 380 Shepard Drive
City, State, Zip: Elgin, IL 60123
Telephone: 847-697-6700
Email: amcswane@hlreng.com

B. Project Description.

Phase I preliminary design engineering for Salem Drive between Weathersfield Way and Schaumburg Road.

C. Representations of Consultant. The Consultant has submitted to the Village a description of the services to be provided by the Consultant, a copy of which is attached as Exhibit 1 to this Agreement ("**Services**"). The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the professional consulting services set forth in Exhibit 1 in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

D. Agreement Amount. The total amount billed by the Consultant for the Services under this Agreement shall not exceed \$141,865, as outlined in Exhibit 1, including reimbursable expenses as identified in Exhibit 1, unless amended pursuant to Subsection 8A of this Agreement.

SECTION 2. SCOPE OF SERVICES.

A. Retention of the Consultant. The Village retains the Consultant to perform, and the Consultant agrees to perform, the Services.

B. Services. The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

C. **Commencement; Time of Performance.** The Consultant shall commence the Services immediately upon receipt of written notice from the Village that this Agreement has been fully executed by the Parties or on the date specified in Exhibit 1 (the "***Commencement Date***"). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services, but in no event later than 365 days after the date of the execution of this Agreement ("***Time of Performance***").

D. **Reporting.** The Consultant shall regularly report to the Village, regarding the progress of the Services during the term of this Agreement.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. **Agreement Amount.** The total amount billed for the Proposal during the term of this Agreement shall not exceed the amount identified as the Agreement Amount in Subsection 1D of this Agreement, without the prior express written authorization of the Village.

B. **Invoices and Payment.** The Consultant shall be paid as provided in Exhibit 1. The Consultant shall submit invoices to the Village in an approved format for those portions of the Services performed and completed by the Consultant. The amount billed in any such invoice shall be based on the method of payment set forth in Exhibit 1. The Village shall pay to the Consultant the amount billed within 30 days after its receipt and approval of such an invoice.

C. **Records.** The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the authorized representative of the Village to inspect and audit all data and records of the Consultant for work done under the Agreement. The records shall be made available to the Village at reasonable times during the Agreement period, and for three years after the termination of the Agreement.

D. **Claim In Addition To Agreement Amount.** If the Consultant wishes to make a claim for additional compensation as a result of action taken by the Village, the Consultant shall provide written notice to the Village of such claim within 7 days after occurrence of such action as provided by Subsection 8D of this Agreement, and no claim for additional compensation shall be valid unless made in accordance with this Subsection. Any changes in the Agreement Amount shall be valid only upon written amendment pursuant to Subsection 8A of this Agreement. Regardless of the decision of the Village relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the Services required to complete the Services under this Agreement as determined by the Village without interruption.

E. **Taxes, Benefits and Royalties.** The Agreement Amount includes all applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

F. **Final Acceptance.** The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the Village of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

SECTION 4. PERSONNEL; SUBCONTRACTORS.

A. Key Project Personnel. The Key Project Personnel identified in Exhibit 1 shall be primarily responsible for carrying out the Services on behalf of the Consultant. The Key Project Personnel shall not be changed without the Village's prior written approval.

B. Availability of Personnel. The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the Village as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the Village for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassigning, or resignation.

C. Approval and Use of Subcontractors. The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by the Village in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the Village. The Village's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by the Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

D. Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the Village, the Consultant shall immediately upon notice from the Village remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "***Confidential Information***" shall mean information designated as "Confidential" in the possession or under the control of the Village relating to the technical, business or corporate affairs of the Village; Village property; user information, including, without limitation, any information pertaining to usage of the Village's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. Village Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Consultant from a source other than the Village prior to the time of disclosure of said information to the Consultant under this Agreement ("***Time of Disclosure***"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the Village; or (iv) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the Village to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the Village under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the Village unless required to perform the Services set forth in this Agreement. The Consultant shall be permitted to disclose Confidential Information as necessary to its subcontractors to fulfill the obligations required by this Agreement. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 6. STANDARD OF CARE; INDEMNIFICATION; INSURANCE.

A. Standard of Care. The Consultant warrants that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in the same locale in existence at the time of performance of this Agreement. The standard of care expressed shall be in addition to any other representations expressed in the Agreement, or expressed or implied by law, which are hereby reserved unto the Village.

B. Indemnification. The Consultant shall, without regard to the availability or unavailability of any insurance either of the Village or the Consultant, indemnify and save harmless, the Village, its officials, and its employees, against any and all damages, liabilities, losses, and expenses, including reasonable attorneys' fees and administrative expenses recoverable under applicable law, to the extent arising, out of or caused by, the Consultant's negligent or wrongful acts or omissions in the performance of, or failure to perform, the Services or any part thereof, except to the extent caused by the negligence of the Village.

C. Insurance. Contemporaneous with the Consultant's execution of this Agreement, the Consultant shall provide certificates of insurance and upon request, policies of insurance, all with coverages and limits acceptable to the Village, and evidencing at least the minimum insurance coverages and limits as set forth in Exhibit 2 to this Agreement. But in no event shall any work begin without an insurance certificate or policy having been provided and approved by the Village. Such certificates shall be from companies with a general rating of A and a financial size category of Class X or better, in Best's Insurance Guide. Such certificates of insurance shall provide that no insurer change, modification in, or cancellation of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given to the Village. The Consultant shall, at all times during the term of this Agreement, maintain and keep in force, at the Consultant's expense, the insurance coverages provided above, including without limitation at all times to meet the Standard of Care requirements of Subsection 6(A) of this section.

D. No Personal Liability. No elected or appointed official or employee of the Village shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement. Likewise, no claims or suits shall be made against the employees of the Consultant as a result of the execution of this Agreement.

SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A. Relationship of the Parties. The Consultant shall act as an independent contractor in providing and performing the Services. Nothing, in or done pursuant to this Agreement, shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Consultant; or (ii) to create any relationship between the Village and any subcontractor of the Consultant.

B. Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge, (1) no Village employee or agent is interested in the business of the Consultant or this Agreement; (2) as of the date of this Agreement neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the 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 (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals 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 the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the Village for all loss or damage that the Village may suffer, and this Agreement shall, at the Village's option, be null and void.

D. Sexual Harassment Policy. The Consultant certifies that it has a written sexual harassment policy in full compliance with Section 2-105(A) (4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A) (4).

E. Patriot Act Compliance. The Consultant represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Consultant further represents and warrants to the Village that the Consultant and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Consultant hereby agrees to defend, indemnify and hold harmless the Village, its corporate authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

F. **Termination.** Notwithstanding any other provision hereof, the Village may terminate this Agreement at any time upon 15 days prior written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed as determined as provided in Exhibit 1. The Consultant may also terminate the Agreement in the event the Village fails to make payment for services rendered, but only after the Consultant has provided written notice to the Village of the lack of payment and allowed the Village 30 days to make payment or contest the payment or amount.

G. **Term.** The time of performance of this Agreement, unless terminated pursuant to the terms of this Agreement, shall expire on the date the Village determines that all of the Services under this Agreement are completed or upon final payment to Consultant. A determination of completion shall not constitute a waiver of any rights or claims which the Village may have or thereafter acquire with respect to any breach hereof by the Consultant or any right of indemnification of the Village by the Consultant.

H. **Compliance with Laws and Grants.** Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable building and zoning statutes, ordinances, rules, and regulations, and 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, creed, color, national origin, age, sex, 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.* Consultant shall also comply with all conditions of any federal, state, or local grant received by Village and made known to the Consultant with respect to this Agreement or the Services.

Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof.

I. **Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that permits completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other material requirement of this Agreement ("**Event of Default**"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the Village, then the Village shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Consultant.** The Village may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by Village.** The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement.

3. **Withholding of Payment by Village.** The Village may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the Village as the result of any Event of Default by the Consultant or as a result of reasonable actions taken by the Village in response to any Event of Default by the Consultant.

J. **No Additional Obligation.** The Parties acknowledge and agree that the Village is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

K. **Village Board Authority.** Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to vendors shall be subject to the approval of the Village Board of Trustees. The Village shall not be liable to any vendor or other third party for any agreements made by the Consultant, purportedly on behalf of the Village, without the knowledge and approval of the Village Trustees.

L. **Mutual Cooperation.** The Village agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the Village may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the Village in the performance of the Services to complete the work and with any other consultants engaged by the Village.

M. **News Releases.** The Consultant shall not issue any news releases or other public statements regarding the Services without prior approval from the Village

N. **Ownership.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other 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 performed under this Agreement ("***Documents***") shall be and remain the exclusive property of the Village. At the Village's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the Village upon payment of all sums due and owing Consultant under the Agreement. Any reuse of Documents other than for the purposes of this Agreement shall be at Village risk and Consultant shall not be liable for any reuse of the Documents.

O. **GIS Data.** [***NOTE: Use this only if applicable***] The Village has developed digital map information through Geographic Information Systems Technology ("***GIS Data***") concerning the real property located within the Village. If requested to do so by the Consultant, the Village agrees to supply the Consultant with a digital copy of the GIS Data, subject to the following conditions:

1. **Limited Access to GIS Data.** The GIS Data provided by the Village shall be limited to the scope of the Services that the Consultant is to provide for the Village;

2. **Purpose of GIS Data.** The Consultant shall limit its use of the GIS Data to its intended purpose of furtherance of the Services; and

3. **Agreement with Respect to GIS Data.** The Consultant does hereby acknowledge and agree that:

a. **Trade Secrets of the Village.** The GIS Data constitutes proprietary materials and trade secrets of the Village and, shall remain the property of the Village;

b. **Consent of Village Required.** The Consultant will not provide or make available the GIS Data in any form to anyone without the prior written consent of the Village;

c. **Supply to Village.** At the request of the Village, the Consultant shall supply the Village with any and all information that may have been developed by the Consultant based on the GIS Data;

d. **No Guarantee of Accuracy.** The Village makes no guarantee as to the accuracy, completeness, or suitability of the GIS Data in regard to the Consultant's intended use thereof; and

e. **Discontinuation of Use.** At such time as the Services have been completed to the satisfaction of the Village, the Consultant shall cease its use of the GIS Data for any purpose whatsoever; and, upon request, an authorized representative of the Village shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify that all use of the GIS Data has been discontinued.

SECTION 8. GENERAL PROVISIONS.

A. **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

B. **Assignment.** This Agreement may not be assigned by the Village or by the Consultant without the prior written consent of the other party.

C. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.

D. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Schaumburg
101 Schuamburg Ct.
Schaumburg, Illinois 60193
Attention: Karyn Robles
E-mail: krobles@villageofschaumburg.com

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Consultant Firm Name: Hampton, Lenzini and Renwick, Inc.
Street Address: 380 Shepard Dr
City, State, Zip: Elgin, IL 60123
Attention: Amy McSwane
Facsimile: _____
Email: amcswane@hlreng.com

E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than the Consultant shall be made or be valid against the Village.

F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

G. Time. Time is of the essence in the performance of this Agreement.

H. Governing Laws. This Agreement shall be interpreted according to the laws of the State of Illinois.

I. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the Village and the Consultant with respect to the Proposal and the Services.

J. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

K. Exhibit. Exhibits 1 and 2, are attached hereto, and by this reference incorporated in and made a part of this Agreement. In the event of a conflict between the Exhibit and the text of this Agreement, the text of this Agreement shall control.

L. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

M. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES FOLLOW]

VILLAGE OF SCHAUMBURG

By: _____
Village Manager

ATTEST:

By: _____
Village Clerk

CONSULTANT

By: Cindy McSwane

TITLE: Corporate Treasurer

ATTEST:

By: Erica Solari

TITLE: Executive Vice President