

**RESOLUTION NO. R-20-11**

**A RESOLUTION AUTHORIZING AND APPROVING AN AGREEMENT FOR PROFESSIONAL  
SERVICES AGREEMENT BY AND BETWEEN THE  
VILLAGE OF CLARENDON HILLS AND MUNICIPAL SERVICES ASSOCIATES, INC.  
FOR TELECOMMUNICATIONS RELATED CONSULTING SERVICES**

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**WHEREAS**, the Village of Clarendon Hills, Illinois (the "Village"), acting by and through its Village President and Board of Trustees (the "Village Board"), is a municipal corporation operating pursuant to the Illinois Municipal Code; and

**WHEREAS**, Staff is recommending the Village engage the services of Municipal Services Associates, Inc. for telecommunications related consulting services; and

**WHEREAS**, upon the recommendation of Staff, the Village Board desires to engage the services of Municipal Services Associates, Inc. for telecommunications related consulting services pursuant to an agreement substantially in the form attached hereto; and

**NOW THEREFORE BE IT RESOLVED** by the Village President and Board of Trustees of the Village of Clarendon Hills, Illinois, as follows:

**SECTION 1 Recitals:** The foregoing recitals shall be and are hereby incorporated into, and made a part of, this Resolution as the findings of the Village Board.

**SECTION 2 Approval of the Professional Service Services Agreement:** The Village hereby approves the Agreement substantially in the form attached hereto and made a part hereof as Exhibit 1 and directs the Village President or an authorized designee to negotiate final terms, if any, with the advice of the Village Attorney.

**SECTION 3 Authorization and Direction:** The Village Manager is hereby authorized, empowered and directed to sign, and the Village Clerk to attest thereto, the agreement presented herein and any finally negotiated terms as set forth therein.

**SECTION 4 Other Actions Authorized:** The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of this Resolution and otherwise to consummate the transactions contemplated herein, and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

**SECTION 5 Acts of Village Officials:** That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of this Resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

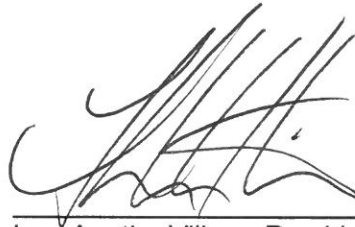
**SECTION 6 Effective Date:** This Resolution shall be in full force and effect after its passage and approval as required by law.

**PASSED and APPROVED** this 3<sup>rd</sup> day of February 2020.

AYES: Trustees DeDobbelaere, Freve, Hall, Jordan, and Jorissen

NAYS: None

ABSENT: Trustee Knoll



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Len Austin, Village President

ATTEST:

  
\_\_\_\_\_  
Dawn M. Tandle, Village Clerk

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN THE VILLAGE OF CLARENDON HILLS, ILLINOIS AND  
MUNICIPAL SERVICES ASSOCIATES, INC.  
FOR TELECOMMUNICATIONS RELATED CONSULTING SERVICES**

THIS AGREEMENT is dated as of the 4<sup>th</sup> day of February, 2020 ("Agreement") by and between the VILLAGE OF CLARENDON HILLS, an Illinois municipal corporation ("Village") and Municipal Services Associates, Inc. ("Consultant").

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:

1. **PARTIES:** The parties to this Agreement and the address and contact information for each is as follows:

Village: Village of Clarendon Hills  
1 North Prospect Avenue  
Clarendon Hills, IL 60514  
Contact: Kevin Barr  
Village Manager ("Village Representative")  
630-288-5404  
[kbarr@clarendonhills.us](mailto:kbarr@clarendonhills.us)

Consultant: Municipal Services Associates, Inc.  
3 Golf Center #311  
Hoffman Estates, Illinois 60169  
Contact: Stuart Chapman  
President  
847-882-7773 & 847-867-6117  
[msaschapman@cs.com](mailto:msaschapman@cs.com)

2. **PERFORMANCE OF SERVICES**

- 2.1. **Project Description.** The Consultant will provide all necessary services to perform the work in connection with the Scope of Work dated January 21, 2020, a copy of which is attached as Exhibit A to this Agreement (hereafter referred to as "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 services set forth in Exhibit A in a manner consistent with the standards of professional practice recognized by the industry providing services of a similar nature.

- 2.2 Time of Performance. The Consultant's provision of Services shall commence upon signature of the contract by both parties, but no later than February 15, 2020 (the "Commencement Date"). The Consultant shall diligently and continuously prosecute the Services until the completion of the work in accordance with deadlines established for particular tasks from time to time ("Time of Performance") The Time of Performance of this Agreement, unless terminated pursuant to the terms of this Agreement, shall expire on December 31, 2020. A determination of completion shall not constitute a waiver of any rights or claims 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.
- 2.3 Early Termination. Notwithstanding any other provision hereof, the Village may terminate this Agreement at any time upon 30 days prior written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for services satisfactorily performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the services completed as determined as provided in this Agreement.
- 2.4 Suspension of Services. Village may, at any time, with or without cause, suspend all or any portion of services for a period of up to 90 days ("Suspended Services"). Consultant shall immediately stop the performance of the Suspended Services, until such time as Village issues direction to Consultant to resume the Suspended Services. Consultant shall take such action as is reasonably necessary to protect the Suspended Services, and take such additional action as directed by Village.
- 2.5 Force Majeure. Village shall not be responsible for delay in the performance of its obligations under this Agreement caused by a force majeure event. To the extent that a Contracted Service is delayed by a force majeure event, Consultant will be entitled to an equitable adjustment of the time for performance. For purposes of this Agreement, 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, war, riots, strikes, lockouts, or other industrial disturbances.
- 2.6 Assignments; Coordination; Reporting. Assignments and tasks will be assigned to the Consultant by Village Representative or his designee. Consultant shall regularly report to and will coordinate all work through Village Representative or his designee.

- 2.7 **Warranty of Services.** The Consultant warrants that the services shall be performed in accordance with the highest standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The warranty expressed shall be in addition to any other warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Village.
- 2.8 **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 and with any other Consultants engaged by the Village.
- 2.9 **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is approved in writing by the Village Manager and the Consultant.
- 2.10 **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.

### **3. COMPENSATION AND METHOD OF PAYMENT**

- 3.1 **Agreement Amount.** The total amount billed by the Consultant for the Services under this Agreement shall be based on the following rates:

Small Wireless Facilities Review:

1 <sup>st</sup> application -	\$650.00
2 <sup>nd</sup> through 5 <sup>th</sup> application -	\$325.00/application
New Small Wireless Facility	
Utility Pole Where No Pole	
Previously Existed:	\$1,000.00

Macrocell Wireless Facilities Review:

Radio and/or Antenna Panel Swap on	
Existing Tower or Rooftop	\$2,200.00
Generator Installation at Cell Site	\$2,500.00
New Cell Tower, Water Tower	
or Rooftop Installation*	\$3,000.00

\* A new installation includes those where no tower or wireless antenna array and base station installation previously existed.

Other services shall be billed at an hourly rate of \$170.00 per hour. The Village, at its discretion, may seek reimbursement of Consultant's fees and costs by wireless providers or tower construction companies for the review of documents, plans, diagrams, or telecommunications service plans and supporting information, including research, reporting and subsequent inspection.

A. In the event that the amount billed for the Consultant's services exceeds the amount of any escrow or prepayment as may be required by the Village of a wireless provider or tower construction company, the Village shall compensate the Consultant for the entire billed amount and recover any amount exceeding the escrow or prepayment from the wireless services or other telecommunications provider.

- 3.2 Invoices and Payment. 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 Consultant shall submit invoices to the Village no later than once every sixty (60) days specifying the work that has been performed within that prior period. The Village shall pay to the Consultant the amount billed for completed and approved work within thirty (30) days after its receipt and approval of an invoice for same. Such invoices shall include rates stated for the review service rendered or the hours and hourly rate for other services rendered along with any reimbursable expenses, including but not limited to, materials, supplies, photocopying and printing, and costs of postage or overnight mail.
- 3.3 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.
- 3.4 Claim For Additional Compensation. 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 seven (7) days after occurrence of such action, 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 of this Agreement approved by the Village Manager. 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.

- 3.5 Taxes, Benefits and Royalties. The Consultant shall be responsible for paying all applicable federal, state, and local taxes of every kind and nature applicable to the services as well as applicable taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, 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 from its billings for each project. 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.

#### **4. PERSONNEL AND SUBCONTRACTORS**

- 4.1 Key Project Personnel. Key Project Personnel identified in Exhibit A 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.
- 4.2 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 after 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 charge 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.
- 4.3 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. 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.



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.

- 4.4 Village Authority. Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to any subcontractor, vendor or third party shall be subject to the approval of the Village. The Village shall not be liable to any subcontractor, 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.
- 4.5 Lien Waiver. Consultant shall promptly pay for all services, labor, materials and equipment used or employed by Consultant in the performance of the services and shall maintain all materials, equipment, structures, buildings, premises and property of Village free and clear of mechanics' or other liens. Consultant shall, if requested, provide Village with reasonable evidence that all services, labor, materials and equipment have been paid in full.
- 4.6 Safety and Hazardous Materials.
  - A. Consultant acknowledges that there may be hazardous substances, wastes, or materials as defined by applicable law ("Hazardous Materials") at the project site or otherwise associated with the services. In such cases, Consultant shall take appropriate precautions to protect and shall be solely and continuously responsible for the health, safety and welfare associated with its employees, subcontractors, agents and those people under the supervision and control of the Consultant with the performance of the services.
  - B. Consultant's employees, agents, subcontractors and all employees of Consultant's employees, agents, subcontractors who perform the services shall be experienced and properly trained to perform the services under such conditions and shall take adequate precautions to protect human health and the environment in the performance of the services.
  - C. In the event that Consultant observes a potentially hazardous condition relating to the services, Consultant shall bring such condition to the attention of Village.



**5. RELATIONSHIP OF THE PARTIES**

- 5.1 Independent Contractor. The Consultant shall act as an independent contractor in providing and performing the services. Nothing in, nor done pursuant to, this Agreement shall be construed:
- A. To create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Consultant; or
  - B. To create any relationship between the Village and any subcontractor of the Consultant.
- 5.2 Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge:
- A. No employee or agent of the Village is interested in the business of the Consultant or this Agreement;
  - B. 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
  - C. Neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtains or acquires any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.
- 5.3 No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of federal, 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 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; or
  - B. 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.*

C. 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 a corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or a 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.

5.4 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.

## **6. INSURANCE AND INDEMNIFICATION**

6.1 Insurance. Contemporaneous with the Consultant's execution of this Agreement, the Consultant shall provide certificates and policies of insurance, all with coverages and limits acceptable to the Village, in a form acceptable to the Village and from companies with a general rating of A, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the Village. The Consultant shall at all times during the term of this Agreement, maintain and keep the insurance coverage provided above in force, at the Consultant's expense.

6.2 Indemnification. The Consultant shall, without regard to the availability or unavailability of any insurance, either of the Village or the Consultant, indemnify, save harmless, and defend the Village, and its respective officials, employees, agents, volunteers and attorneys against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that arise, or may 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, except to the extent caused by the sole negligence of the Village. The Consultant further agrees that to the extent that money is due the Consultant by virtue of this contract as shall be considered necessary in the judgment of the Village, may be retained by the Village to protect itself against said loss until such claims, suits, or judgments shall have been settled or discharged and/or evidence to that effect shall have been furnished to the satisfaction of the Village.

## **7. USE AND DISCLOSURE OF INFORMATION**

- 7.1 Confidential Information. The term “Confidential Information” shall mean information in the possession or under the control of the Village relating to the technical, business or corporate affairs of the Village; property of the Village; user information, including, without limitation, any information pertaining to usage of the Village’s computer systems, 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 the Village disclosed 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; or (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.
- 7.2 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. To the extent allowed by law, 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. The Consultant shall use reasonable measures at least as strictly as those the Consultant uses to protect its own Confidential Information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.
- 7.3 Illinois Freedom of Information Act (FOIA). FOIA applies to public records in the possession of a party with whom the Village has contracted. The 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. Consultant will comply with all requests made by the Village for public records (as that term is defined by Section 2(c) of FOIA) in the Consultant’s possession and will provide the requested public records to the Village within two (2) business days of the request being made by the Village. The undersigned agrees to indemnify and hold harmless the Village from all claims, costs, penalty, losses and injuries (including but not limited to, attorneys’ fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Village under this Agreement.

- 7.4 GIS Data. The Village has developed digital map information through Geographic Information Systems Technology ("GIS data") concerning the real property located within the Village. If necessary to the performance of the services and if requested to do so by the Consultant, the Village may supply the Consultant with access to the GIS data. In such case the Consultant agrees as follows:
- A. Limited Access to and use of GIS data. The GIS data provided by a Village shall be limited to the scope of the work that the Consultant is to provide for the Village, and the Consultant shall limit its use of the GIS data to its intended purpose of furtherance of the work;
  - B. 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;
  - C. Consent of the Village Required. The Consultant will not provide or make available GIS data in any form to anyone without the prior written consent of the Village Manager or his designee;
  - D. 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;
  - E. 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
  - F. Discontinuation of Use. At such time as the Services have been completed to the satisfaction of or terminated by the Village, the Consultant shall cease its use of the GIS data for any purpose whatsoever. 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.
- 7.5 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 remains 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.

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

## **8. COMPLIANCE WITH LAWS AND GRANTS**

- 8.1 General Compliance. 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 statutes, ordinances, rules, and regulations, including without limitation 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 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. Every provision required by law to be inserted into this Agreement shall be deemed to be inserted herein.
- 8.2 Grant Compliance. Consultant shall also comply with all conditions of any federal, state, or local grant received by the Village or Consultant with respect to this Agreement or the services if any portion of this Agreement or the Services contained therein are funded in whole or in part by any federal, state, or local grant.
- 8.3 Sexual Harassment Policy. The Consultant represents and warrants that it has and follows 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).
- 8.4 Patriot Act Compliance. The Consultant represents and warrants that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, are persons or entities 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 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 respective corporate authorities, and elected or appointed officials, officers, employees, agents, representatives, engineers, volunteers, 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.

8.5 Equal Employment Opportunity Compliance. During the performance of this Agreement, Consultant as follows:

- A. That it will not discriminate against any employee or applicant for employment on the basis of race, age, marital status, color, religion, sex, sexual orientation, physical or mental disability unrelated to ability, national origin or ancestry or an unfavorable discharge from military service. Further, that it will examine all job classifications to determine if minorities or women are underutilized and shall take appropriate affirmative action to rectify any such underutilization.
- B. That, if it hires additional employees in order to perform the services or any portion hereof, it shall determine the availability (in accordance with the Village's rules) of minorities and women in the area(s) from which they may reasonably recruit, and it will hire for each applicable job classification for which employees are hired in such a manner that minorities and women are not underutilized.
- C. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination based on race, color, religion, sex, sexual orientation, national origin or ancestry, marital status, age, physical or mental disability unrelated to ability, or unfavorable discharge from the military.
- D. That it shall submit reports as required by the Village's rules and furnish all relevant information as may from time to time be requested by the Village or the Village, and in all respects comply with the Illinois Human Rights Act and the Village's Rules.



- E. That it shall permit access to all relevant books, records, accounts and work sites by personnel of the Village and the Village for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Village's rules.
- F. That it shall include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portions of the contract obligations are undertaken or assumed so that such provisions will be binding upon such subcontractors. In the same manner as with other provisions of this Agreement, the Consultant will be liable for compliance with applicable provisions of this clause by such subcontractors. Further, it will promptly notify the Village in the event that any subcontractor shall fail or refuse to comply therewith. In addition, Consultant shall not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.
- G. If the Consultant has not complied with all provisions of the Illinois Human Rights Act, or the Rules and Regulations of the Illinois Department of Human Rights, the Consultant may be declared ineligible for future contracts or subcontracts with the Village and this Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

## **9. DEFAULT AND DISPUTE RESOLUTION**

- 9.1 Default. If it should appear at any time that the Consultant has failed, refused or delayed performing, the Services or any other requirement of this Agreement with diligence at a rate that assures completion of the Services and full compliance of this Agreement, ("Event of Default"), and fails to cure any such Event of Default within ten (10) 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:
  - A. 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.



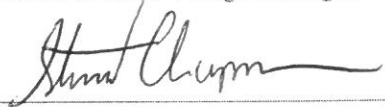
- B. Termination of Agreement by Village. The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement.
  - C. Withholding of Payment by Village. The Village may withhold from any payment, whether or not previously approved, or may 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 actions taken by the Village in response to any event of default by the Consultant.
- 9.2 Dispute Resolution. Any dispute related to this Agreement shall, upon request by either party, 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. 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, either party may refer the matter to a court of appropriate jurisdiction. 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.
- 9.3 During the dispute resolution period, or if litigation ensues, pending any final judicial decision or settlement, Consultant shall proceed diligently with the services.
- 9.4 General Provisions Notice.
- A. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally to an authorized representative of the party; (ii) by certified mail addressed to the contact person listed in Section 1 of this Agreement, return receipt requested, and deposited in the U.S. Mail, postage prepaid; (iii) by facsimile ("Fax") to a number provided by the contact person listed in Section 1 of this Agreement, and deposited in the U.S. Mail, postage prepaid by the recipient, or; (iv) by electronic internet mail ("e-mail") addressed to the contact person listed in Section 1 of this Agreement, and deposited in the U.S. Mail, postage prepaid.

- B. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of actual receipt or three (3) business days following deposit in the U.S. Mail.
  - C. 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 the party listed in Section 1 of this Agreement.
- 9.5 Assignment. This Agreement may not be assigned by the Village or by the Consultant without the prior written consent of the other party.
- 9.6 Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or a corporation other than the Consultant shall be made or be valid against the Village.
- 9.7 Severability. 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. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.
- 9.8 Time. Time is of the essence in the performance of this Agreement.
- 9.9 Governing Laws. This Agreement shall be interpreted according to the laws of the State of Illinois.
- 9.10 Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.
- 9.11 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 either of the Village and the Consultant with respect to the Proposal and the Services.
- 9.12 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.

- 9.13 Remedies. No remedies or rights conferred upon Village by this Agreement 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.
- 9.14 Survival of Terms. Articles on Indemnity, Confidential Information and Rights in Data shall survive termination of this Agreement.
- 9.15 Exhibit. Exhibit A (Consultant's proposal dated January 21, 2020) is 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.
- 9.16 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.
- 9.17 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.

  
VILLAGE OF CLARENDON HILLS, ILLINOIS  
by: Kevin S. Barr, Village Manager

2-4-2020  
DATE

  
MUNICIPAL SERVICES ASSOCIATES, INC.  
By: Stuart Chapman, its President

2/4/2020  
DATE

**Exhibit A**  
**PROPOSAL OF MUNICIPAL SERVICES ASSOCIATES, INC.**  
**DATED JANUARY 21, 2020**

Definitions:

- Small Wireless Facilities: Wireless facilities that meet both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- Wireless Services Provider: A communications provider that uses technology based on radio frequency (RF) spectrum segments to transmit voice, video, and/or data signals to and from antennas mounted on poles or other structures, and whose signals are controlled by a base station that is either pole-mounted, mounted on platforms, or located in an enclosed shelter. Examples of such providers include cellular companies, such as AT&T Mobility, T-Mobile, Verizon Wireless, and Sprint, or other wireless carriers, such as paging services, dispatchers, or two-way radio services.
- Wireless Facilities Provider: A company that constructs poles, towers, or other structures designed primarily for the installation of wireless and/or wired services equipment. Examples of such providers include companies that build towers, such as Crown Castle, SBA, and American Tower, and companies that erect poles, such as Mobilitie.

**Wired Services Provider:** A communications provider that uses technology based on a variety of radio frequency (RF) channels to transmit voice, video, and/or data signals by wire from transmission sites to customer receivers. Wired services providers transmit such signals by wires which may be aerially-mounted or located underground. Examples of such providers include wireless cellular providers and their subsidiaries, such as MCImetro, tower companies that install fiber optic networks such as Crown Castle and SBA Communications, or wired Internet providers, such as Google.

**Key Project Personnel:** Stuart Chapman will be the Key Project Personnel assigned to perform services under this Scope of Work and under the Professional Services Agreement.

**Proposed Services to be Performed:**

**Wireless Communications Services:**

**Activities:**

1. Plan Review Tasks:
  - A. Review plans of wireless providers for the installation of small wireless facilities, and larger wireless facilities, such as those mounted on monopole towers or rooftops, or support systems necessary for the operation of such facilities, on public or private property within the boundaries of the Village of Clarendon Hills.
    - (1) Reviews include examination of drawings, structural evaluations, and equipment specifications. Analysis of the proposed project with regard to location in relation to residences, buildings, or commercial facilities, and where applicable, location within the Right-of-Way and compliance with the Village Zoning Ordinance.
    - (2) Where necessary, conduct research regarding equipment proposed for use on the wireless facility installation for the purpose of project clarification, potential impact on the service area within the Village, or for comparison with existing equipment proposed for replacement or disconnection.

- (3) In the event that plans for larger wireless facilities submitted by the wireless services provider require a Special Use Permit, meet with Community Development Department, Public Works staff, and the Village Manager's Office as needed, and if necessary, attend Plan Commission and Zoning Board, and Village Board meetings.
  - (3) If necessary, attend any other meetings with the Community Development Department, the Public Works Department, and the Village Manager's Office and where applicable, with the wireless services provider or its designee, to discuss various aspects of the proposed project and any modifications to the proposed plans.
- B. Prepare correspondence to the Community Development Department, or Public Works Department, and the Village Manager's Office identifying deficiencies in the proposed plans or missing information that is necessary for the completion of the review. The Community Development Department, or Public Works Department will transmit such correspondence to the wireless services provider or its designee.
- C. Review information by the wireless provider or its designee submitted in response to earlier correspondence. From this response, the Consultant will:
  - (1) Identify any remaining information that is missing or requires further clarification, and prepare correspondence to the wireless services provider or its designee.
  - (2) Prepare a project report, including recommendations, to the Community Development Department, or Public Works Department, and the Village Manager's Office.

Service Fees:

Small Wireless Facilities Review:

1 <sup>st</sup> application -	\$650.00
2 <sup>nd</sup> through 5 <sup>th</sup> application -	\$325.00/application
New Small Wireless Facility	
Utility Pole Where No Pole	
Previously Existed:	\$1,000.00

Service Fees:

Macrocell Wireless Facilities Review:

Radio and/or Antenna Panel Swap on Existing Tower or Rooftop	\$2,200.00
Generator Installation at Cell Site	\$2,500.00
New Cell Tower, Water Tower or Rooftop Installation*	\$3,000.00

\* A new installation includes those where no tower or wireless antenna array and base station installation previously existed.

**OPTIONAL SERVICE: Wired Communications Services**

Activities:

1. Wired Communications Plan Review Tasks.
  - A. Review plans of wired communications providers for the installation of wired communications facilities, or support systems necessary for the operation of such facilities, on public or private property within the boundaries of the Village of Clarendon Hills. The review includes examination of drawings for burial or aerial installation of fiber optic lines and aboveground location of associated equipment, comparison with GIS maps, analysis of equipment specifications, and visual inspection of proposed locations.
    - (1) If necessary, attend any other meetings with the Public Works Department, and the Village Manager's Office, and where applicable, with the wired services provider or its designee, to discuss various aspects of the proposed project and any modifications to the proposed plans.
  - B. Prepare correspondence to the Public Works Department and the Village Manager's Office identifying deficiencies in the proposed plans or missing information that is necessary for the completion of the review. Such correspondence will be sent by the Consultant to the wired communications provider or its designee.
  - C. Review information by the wired provider or its designee submitted in response to earlier correspondence. From this response, the Consultant will:
    - (1) Identify any remaining information that is missing or requires further clarification, and prepare correspondence to the Public Works Department, and the Village Manager's Office, for transmittal to the provider or its designee.



- (2) Prepare a project report, including recommendations, to the Public Works Department and the Village Manager's Office.

Service Fees: Hourly rate of \$170.00 per hour.

**IMPORTANT NOTE:** The Village, at its discretion, may seek reimbursement of its fees and costs, including consultant costs, by wired or wireless providers for the review of applications, including documents, plans, diagrams, and supporting information, including research, reporting and subsequent inspection.