

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**1/15/2019**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Design Services Contract - Leopardo	Dave Fieldman Village Manager

**SYNOPSIS**

A resolution is requested authorizing execution of a preconstruction services agreement for the Downers Grove Police Department and Village Hall Project between the Village of Downers Grove and Leopardo Companies, Inc. ("Leopardo") in the amount of \$45,000.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2017-2019 include *Exceptional Municipal Services*.

**FISCAL IMPACT**

Funding for this agreement is available in the Major Buildings Fund.

**RECOMMENDATION**

Approval on the January 15, 2019 Consent Agenda.

**BACKGROUND**

On December 18, 2018, the Village Council approved a motion to direct staff to implement key terms of the Facilities Sustainability Plan. In order to continue to meet the timeline outlined in the key terms, staff is recommending the authorization of a preconstruction services agreement with Leopardo for program verification and pre-design services.

The program verification and pre-design phase includes:

- Verification of the program needs, project schedules, design parameters, budget and site conditions
- Validation of each building component to assure that the intended scope is in alignment with program needs, budget, and code requirements
- Creation of a final building program document to be used as the foundation to begin the schematic design process.

Additional contracts with Leopardo for other design and construction services will be prepared for Council review and consideration at a future date.

**ATTACHMENTS**

Resolution  
Agreement

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF AN  
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND LEOPARDO COMPANIES, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Leopardo Companies, Inc. (the "Consultant"), for preconstruction services for the Downers Grove Police Department and Village Hall, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

## AGREEMENT

This Agreement is made this 15th day of January 2019 by and between Leopardo Companies, Inc. ("Consultant") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to retain the services of the Consultant to provide Preconstruction Services for the Downers Grove Police Department and Village Hall Project within the Village of Downers Grove; and

WHEREAS, the Consultant is willing to perform these services for compensation and in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

### **I. Scope of Services**

Consultant agrees to provide the services in accordance with Appendix A attached hereto and incorporated herein by reference. If any conflicts exist in the terms and conditions of this Agreement and Appendix A, the provisions of this Agreement shall prevail.

### **II. Term of Agreement**

The term of this Agreement shall begin on the date of execution and terminate upon completion of the services, unless otherwise terminated sooner.

### **III. Compensation**

#### **A. Basic Fees:**

Fees for these services shall not exceed the amount of provided for in Appendix B attached hereto and incorporated herein by reference. Any additional work performed that will increase the agreement price in excess of this amount must be approved in writing by both parties.

#### **B. Consultant Invoices:**

The Consultant shall prepare invoices that contain a reference number, the billing period, the classifications and/or names of staff, numbers of hours billed to the project (with clear itemization for hours spent), all reimbursable expenses and a total reimbursable amount for the billing period including receipts therefor, amounts billed to date, and amounts received to date.

### **C. Prompt Payment Act:**

The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Consultant within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Consultant within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Consultant requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

## **IV. General Terms and Conditions**

### **A. Relationship Between the Consultant and the Village**

The relationship between the Village and the Consultant is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

### **B. Equal Employment Opportunity**

In the event of the Consultant's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled 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. During the performance of this Agreement, the Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. 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 because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Consultant's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Consultant in its efforts to comply with such Act and Rules and Regulations, the Consultant will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

### **C. Sexual Harassment**

Consultant, as a party to a public contract, has a written sexual harassment policy so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Consultant or supplier's internal complaint process including penalties;

5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;
6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

#### **D. Drug Free Work Place**

Consultant, as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or Consultant's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or Consultant's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
3. Providing a copy of the statement required by subparagraph (1) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
  4. Notifying the contracting or granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.
  5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5 of the Drug Free Workplace Act.
6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

#### **E. Non-Discrimination**

Consultant and its employees agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights rules is specifically incorporated herein.

The Americans with Disabilities Act (42 U.S.C. 12101) and the regulations thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this Agreement, the undersigned vendor certifies that services, programs and activities provided under this Agreement are and will continue to be in compliance with the ADA.

#### **F. Campaign Disclosure Certificate**

The Consultant shall comply with the Campaign Disclosure Certificate attached hereto and incorporated herein by reference as Exhibit A.

#### **G. 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, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses(including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

#### **H. Cooperation with FOIA Compliance**

Consultant acknowledges that the Freedom of Information Act may apply to public records in possession of the Consultant. Consultant shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et.seq.

#### **I. Copyright or Patent Infringement**

The Consultant agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Consultant that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

#### **J. Standard of Care**

Services performed by Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representations express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinions, and documents or otherwise.

If the Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from the Village, the professional services necessary to correct errors and omissions caused by Consultant's failure to comply with the above standard and reported to Consultant within one (1) year from the completion of Consultant's services for the Project.

#### **V. Insurance and Indemnification of the Village**

##### **A. Insurance**

The Consultant shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, will protect the Consultant from the types of claims set forth below which may arise out of or result from the Consultant's operations under this Contract and for which the Consultant may legally liable:

Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;

Claims for damages resulting from bodily injury, occupational sickness or disease, or death of the Consultant's employees;

Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Consultant's employees;

Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Consultant, or (2) by another person;

Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

Claims for damages as a result of professional or any other type of negligent action by the Consultant or failure to properly perform services under the scope of the agreement between the Consultant and the Village.

The Consultant shall demonstrate having insurance coverage for a minimum of \$2 million for professional liability (errors and omissions).

As evidence of said coverages, Consultant shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village.

## **B. Indemnification**

The Consultant will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Consultant under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence. This provision shall survive termination of this Agreement.

## **VI. Miscellaneous Provisions**

### **A. Termination**

In the event of the Consultant's nonperformance, breach of the terms of the Agreement, or for any other reason, including that sufficient funds to complete this Agreement are not appropriated by the Village, the Agreement may be canceled, in whole or in part, upon the Village's written notice to the Consultant. The Village will pay the Consultant's costs

actually incurred as of the date of receipt of notice of termination. Upon termination, the Consultant will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of termination.

#### **B. Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

#### **C. Successors and Assigns**

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

#### **D. Waiver of Contract Breach**

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

#### **E. Amendment**

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

#### **F. Severability of Invalid Provisions**

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

#### **G. Assignment**

The Consultant will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Consultant from its obligations or change the terms of this Agreement.

#### **H. Notice**

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

**Village Manager  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, IL 60515**

**Leopardo Companies, Inc.  
5200 Prairie Stone Parkway  
Hoffman Estates, IL 60192**

**I. Village Ordinances**

The Consultant will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

**J. Use of Village's Name**

The Consultant is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

**Village of Downers Grove**

*Leopardo Companies, Inc.*

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

By: *[Signature]*

Title: \_\_\_\_\_

Title: *Senior Vice President*

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

Date: *4/11/19*

**Exhibit A**  
**Campaign Disclosure Certificate**

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing this Agreement, Consultant agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

- Consultant has not contributed to any elected Village position within the last five (5) years.

*L. McMillan*  
Signature

Leigh McMillan  
Print Name

- Consultant has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: \_\_\_\_\_  
(company or individual)

To whom contribution was made: \_\_\_\_\_

Year contribution made: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

## **APPENDIX A**

### **Proposal to provide Preconstruction Services for the Downers Grove Police Department and Village Hall Project**

**LEOPARDO COMPANIES, INC.** with offices at 5200 Prairie Stone Parkway, Hoffman Estates, Illinois 60192 proposes to provide the following services for the Village of Downers Grove with offices at 801 Burlington Avenue, Downers Grove, IL 60515 for the construction of the new Downers Grove Police Department and Village Hall hereinafter referred to as "The Project", located at 801 Burlington Avenue, Downers Grove, IL 60515.

#### **PRECONSTRUCTION SCOPE OF WORK AND FEE DESCRIPTION**

The description below provides a detailed look at critical elements and milestones in the development of the project. Our approach to the management of the design and construction of your project will begin with the development of a complete understanding of the goals and objectives by our project team. This understanding serves as a basis from which all subsequent decisions regarding the design and construction approach are to be made. While budget, schedule and project scope issues are universally critical to the success of a project, the manner in which each is addressed must be "tailored" to the unique needs of the Village of Downers Grove and the Downers Grove Police Department.

We utilize a collaborative team building process by assembling a group of key team leaders who have the requisite management, design and technical competence both in design and construction in order to respond to the needs of the project. From Design to Documentation to Construction, our scope of work and tasks within the Work Plan is summarized below:

#### **PROGRAM VERIFICATION PHASE & PRE-DESIGN**

A kick-off meeting begins the process wherein verification of the program needs, project schedules, design parameters, budget and site conditions is conducted relating to program and procedures. This meeting ensures the development of a clear understanding of the objectives, alignment of the program with the construction budget, and the establishment of program priorities. Each building component is validated to assure that the intended scope is in alignment with program needs, budget, and code requirements. A final Building Program document is created to capture this information and used as a foundation to begin the design process.

During this phase, our team will:

- 1) Share contact lists and establish lines of communication.
- 2) Develop a communications matrix that identifies essential communication paths and methods between all project stakeholders.
- 3) Review the space needs requirements with the Village's stakeholders.

- 4) Revise program based on meetings with stakeholders.
- 5) Learn about community concerns through a meeting with the Village.
- 6) Conduct design charette meeting with stakeholders to create Village and Police department adjacency plans. Total of three (3) meetings.
- 7) Provide up to three (3) space plans for consideration by the Village.
- 8) Work with overall site engineering team for collaborative solution.
- 9) Actively discuss all project specifics and systems, including foundation, superstructure, enclosure, MEP, finishes, etc. Programming, stacking, adjacencies and schedule are also covered.
- 10) Continue the value design process by cost modeling alternative processes, systems and materials to uncover the most economical and efficient path to completion.
- 11) Start initial logistics planning discussions.
- 12) Identify and proactively plan for long-lead materials, trades and controls -- including sustainable components, etc.
- 13) Update the master schedule we have already developed, which will serve as the basis for all future planning and tracking over the life of the project. The master schedule will be updated frequently to offer our clients a tight, precise schedule they can depend on.

#### FEE STRUCTURE

The project team believes in senior management level involvement in every phase of a project. Our proposal provides you with a high level of experienced staff with an appropriate amount of time necessary to develop and analyze all information and create creative cost effective concepts and solutions that will become the foundation for your project. This fee has been developed based on the information provided in your proposal request and our initial professional judgment of how your project could be structured.

#### DESIGN-BUILD TEAM SERVICES FEE SCHEDULE

Program	\$45,000
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<b>Preconstruction Services Fee:</b>	<b>\$45,000</b>
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Environmental testing is assumed to be provided by the Village of Downers Grove.

Trade costs, General Conditions, any third party testing (geotechnical, materials testing, and commissioning), design-builder fee, insurance, and bond will be included as a cost of the work in the construction budgets.

Upon executing below, this proposal will serve as the Village of Downers Grove's authorization of Leopardo Companies Inc. to proceed with the Preconstruction Services

upon the conditions as described herein. The Village warrants that the Village will pay Leopardo Companies for the Preconstruction Services as outlined in the Fee Schedule.

1. Payment for work performed by Leopardo under this amendment will be made in compliance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq..
2. Unless both parties otherwise have agreed in writing, Village shall have no right to require Leopardo to perform any work other than the Work set forth in this Agreement. If there is any other work that the parties mutual agree Leopardo should perform under this Agreement, the additional or different work will be described and paid for only as the parties mutually agree in writing.
3. Either Village or Leopardo may terminate this Agreement without cause and for their respective convenience. In that case, Village shall pay to Leopardo the remaining, unpaid costs and expenses incurred for the Work performed by Leopardo to the date of termination.

If Village terminates this Agreement, Leopardo shall, upon Village's payment in full of the amounts due Leopardo under this Amendment, grant Village a limited license to use the Work Product to complete the Project.

We sincerely appreciate the opportunity you have extended Leopardo Companies and we are grateful for our association with the new Downers Grove Police Department and Village Hall project.