

**VILLAGE OF GRAYSLAKE  
PROFESSIONAL SERVICES AGREEMENT**

This AGREEMENT is dated as of the 27<sup>th</sup> day of April, 2016 ("*Agreement*"), and is by and between the VILLAGE OF GRAYSLAKE, an Illinois municipal corporation ("*Village*") and the Consultant identified in Section 1A of this Agreement.

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 perform and to provide all necessary professional consulting services to perform the work in connection with the project identified below:

**Consultant Name ("*Consultant*"):** echogravity

**Address:** 3 Golf Center, Suite 270  
Street

Hoffman Estates, IL 60169  
City State Zip

**Telephone No.:** (847) 960-3305 x402

**Email:** kevin@echogravity.com

**Project Name/Description:** AQUATIC CENTER COMMUNICATIONS PLAN EXECUTION

B. **Project Description.** Consultant shall provide marketing services in Attachment C relating to the Esper A. Petersen Foundation Family Aquatic Center as requested or directed by the Village.

C. **Representations of Consultant.** The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the marketing services ("*Services*") in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature in Northeastern Illinois.

D. **Fees for Services.** The Consultant shall invoice the Village for Services provided in accordance with the fee schedule ("*Schedule*") attached as Exhibit A to this agreement. In general, the fees shall be invoiced at the rates indicated in the Schedule.

**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 be prepared to commence the Services immediately upon receipt of written notice from the Village that this Agreement has been fully executed by the Parties ("***Commencement Date***"). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services or upon the termination of this Agreement by the Village.

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

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

**A. Invoices and Payment.** The Consultant shall submit invoices in an approved format to the Village for costs incurred by the Consultant in performing the Services. The amount billed in such invoice for the Services shall be based on the rates set forth in the Schedule. The Village shall pay to the Consultant the amount billed within 30 days after receiving such an invoice.

**B. 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 billing records shall be made available to the Village at reasonable times during the Agreement period, and for a year after the termination of the Agreement.

**C. Taxes, Benefits, and Royalties.** Each payment by the Village to the Consultant 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.

**D. 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 have been identified by the Consultant as Kevin O'Brien. These individuals shall be primarily responsible for carrying out the Services on behalf of the Consultant, with \_\_\_\_\_ as the primary contact. 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 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 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: (1) 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*"); (2) to have been in the public domain prior to the Time of

Disclosure; (3) 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 (4) 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. 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 employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

## **SECTION 6. STANDARD OF SERVICES AND INDEMNIFICATION.**

**A. Representation and Certification of Services.** The Consultant represents and certifies that the Services shall be performed in accordance with the standards of professional practice and care practiced by marketing firms in performing services of a similar nature in Northeast Illinois at the Time of Performance.

**B. Indemnification.** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Village, its officials, and employees (collectively, Village) against all damage, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Village agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Village's negligent acts in connection with services provided under this agreement and the acts of its contractors, subcontractors or consultants or anyone for whom the Village is legally liable. Neither the Village nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

**C. Insurance.** The Consultant proposes, and agrees that the Consultant shall provide certificates and policies of insurance evidencing the minimum insurance coverages and limits set forth in **Exhibit B** to this Agreement within 10 days following the Commencement Date. Such policies shall be in forms, and from companies, acceptable to the Village. Such policies shall name the Village as an additional insured and cancellation notice recipient, including without limitation naming the Village as an additional insured. Such insurance 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 Owner. In the event of any such cancellation or non-renewal, the Consultant shall provide, with the notice thereof, evidence of replacement insurance. The insurance coverages and limits set forth in Exhibit B shall be deemed to be minimum coverages and limits and shall

not be construed in any way as a limitation on the Consultant's duty to carry adequate insurance or on the Consultant's liability for losses or damages under this Agreement.

**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.

## **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, nor done pursuant to, this Agreement shall be construed (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Consultant; or (2) 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 (1) 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 (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant 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. 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 which shall be determined on the basis of the rates set forth in the Proposal.

**E. 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 assures 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 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 after the effective date of termination.

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 actions taken by the Village in response to any Event of Default by the Consultant.

**F. 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 and the completion of the Services and with any other consultants engaged by the Village.

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

**H. Ownership.** Designs, drawings, plans, specifications, photos, reports, information, electronic data and files, 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.

**I. Records.** Consultant agrees to maintain the records and documents for projects of the Village in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Consultant shall produce records that are responsive to a request received by the Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the time frames required. If additional time is necessary to compile

records in response to a request, then Consultant shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act based upon Consultant's failure to produce documents or otherwise appropriately respond to a request under the Act, then Consultant shall indemnify and hold the Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

**SECTION 8. GENERAL PROVISIONS.**

**A. Amendment.** No amendment or modification to this Agreement shall be effective unless and until the 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 to this Agreement and their agents, successors, and assigns.

**D. Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. 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 Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other 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:

Mike Ellis  
Village Manager  
Village of Grayslake  
10 South Seymour Avenue  
Grayslake, Illinois 60030

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

echogravity  
3 Golf Center  
Suite 270  
Hoffman Estates  
Attention: Kevin O'Brien

**E. Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against either party as this Agreement has been entered into for the sole benefit of the parties.

**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. Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

**I. Governing Laws.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**J. Authority to Execute.**

1. **The Village.** The Village hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. **The Consultant.** The Consultant hereby warrants and represents to the Village that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

**K. Entire Agreement.** This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral relating to the subject matter of this Agreement.

**L. Waiver.** Neither the Village nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Consultant's right to enforce such rights or any other rights.

**M. Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any

party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

**N. Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

**O. Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

**P. Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

**Q. Exhibits.** Exhibits A, B, and C are attached to this Agreement, 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.

**R. 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 rights, remedies, and benefits allowed by law.

**S. 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.

ATTEST:

By:

Jennifer Hess, Deputy Village Clerk



VILLAGE OF GRAYSLAKE

By:

Michael J. Ellis, Village Manager

ATTEST:

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

CONSULTANT

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

echogravity

**EXHIBIT A**

**FEE SCHEDULE FOR SERVICES**

**\*Estimated fees from echogravity. Other fees in the plan may be incurred, but will be directly paid to respective vendor.**

<b>Month</b>	<b>echogravity Fees (estimate)</b>	<b>Out of Pocket Fees (estimate)</b>
<b>May</b>	<b>\$5,500</b>	<b>\$1,950</b>
<b>June</b>	<b>\$4,200</b>	<b>\$200</b>
<b>July</b>	<b>\$2,300</b>	<b>\$200</b>
<b>August</b>	<b>\$2,000</b>	
<b>September</b>	<b>\$1,500</b>	
<b>October</b>	<b>\$2,000</b>	
<b>November</b>	<b>\$2,000</b>	
<b>December</b>	<b>\$2,300</b>	<b>\$200</b>
<b>January</b>	<b>\$3,500</b>	
<b>February</b>	<b>\$4,000</b>	
<b>March</b>	<b>\$6,500</b>	<b>\$1,800</b>
<b>April</b>	<b>\$8,000</b>	<b>\$1,850</b>
<b>TOTAL (estimate)</b>	<b>\$43,800</b>	<b>\$6,200</b>
<b>Total (estimate)</b>	<b>\$50,000</b>	

**\*The Total Fee (above) will not exceed \$50,000 for Fiscal Year 2016/17.**

**EXHIBIT B**

**INSURANCE COVERAGES**

<b>Coverage</b>	<b>Limits of Liability</b>
Worker's Compensation	Statutory
General Liability	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
Products and Completed Operations Aggregate	\$2,000,000
Automobile Liability	\$1,000,000 Combined Single Limit
Professional Liability	\$1,000,000 each claim \$2,000,000 Aggregate
Excess/Umbrella Liability	\$5,000,000 Each Occurrence \$5,000,000 Aggregate

**EXHIBIT C**

**PROJECT DESCRIPTION**

**The May, 2016 – April, 2017 services in the Marketing Communications Plan Deliverable will conclude on April 30, 2017.**