

## Professional Services Agreement

This Professional Services Agreement (the “Agreement”) is made and entered into this [redacted] day of [redacted], 2020, by and between the VILLAGE OF HAMBURG, ILLINOIS, a body politic, located at 146 N. Washington St. PO Box 98, Hamburg, Illinois 62045 (“Village”) and [redacted], LLC, a(n) Illinois **limited liability company**, with its principal place of business located at [redacted] (“Contractor”) and sets forth the terms and conditions under which Contractor agrees to perform certain real estate appraisal services as set forth below.

### 1. SERVICES

Village of Hamburg is working with the Illinois Department of Natural Resources (IDNR) on a grant to implement a program designed to help the owners of properties that have a history of flooding by acquiring and demolishing structures to eliminate the risk of future flood damages, (the “project”). The Contractor, who is a state licensed appraiser, will complete appraisals of up to seven residential properties within Village of Hamburg. ***Please see Attachment A for a list of confidential property addresses.***

The scope of work consists of performing residential property appraisals for up to seven (7) residential properties. The number of appraisals is subject to change based on property owner commitment to participating in the voluntary program.

The following stipulations shall be used in the appraisals:

- A. The appraisals will only be conducted by scheduling the appraisal with the permission of each property owner. The appraisals are to be provided to the Village in original form for each property. The appraisals will be used by the Village to make an offer to purchase to each property owner. Any requests for copies of the appraisals shall be made directly to the Village.
- B. An Illinois State Certified Residential or Certified General appraiser shall perform all appraisals based on a thorough inspection of the interior and exterior of the subject property (no windshield appraisals). At a minimum, an exterior inspection of any comparable sales utilized in the report shall be performed.
- C. All appraisals shall be completed using non-lender Residential Appraisal Report forms. Narrative only appraisals are not acceptable. Each appraisal shall conform to the *Uniform Standards of Professional Appraisal Practice (USPAP)*. Additionally, the appraisal shall be performed consistent with the *Uniform Relocation Assistance and Real Property Acquisition Act (49 CFR Part 24)*. Finally, Appraisal Reports shall comply with the ***Specification for IDNR (Only) Flood Mitigation Appraisal Reports*** which is attached hereto. If a conflict exists between agreements, the Specifications for IDNR shall be deemed controlling.

D. Appraisals shall be made for each property ownership, even if the property consists of multiple lots or parcels. Each appraisal shall identify all parcel permanent identification number (PINs).

E. All properties shall be evaluated in a “pre-flood” condition as of the date of the flooding event. **The effective date to be used for the “pre-flood” value is January 01, 2019.** The Illinois Department of Natural Resources shall be identified as intended users of the appraisal report.

F. The appraiser shall use a sales comparison approach to all appraisals. The cost approach to value shall also be used to support the sales comparison approach. Exception: Sales comparison/market approach to be used on all reports. On improved properties, cost approach will be used in addition to sales comparison/market approach. Any subjects which are determined to be vacant land will employ to sales comparison/market approach only. The cost approach is typically not germane in vacant land appraisals.

G. The appraiser shall be able to substantiate the values used for the sales of all comparable sales and documentation of sales if requested by the Village.

H. Site value adjustments shall be made for any comparable sales that are not located in a floodplain when the subject property is located in a floodplain. Other adjustments for lot size, improvements, basements, etc. will be made as usual. All adjustments shall be supported by market evidence contained in the report.

I. The final estimated retrospective value shall be clearly indicated on the appraisal in addition to the indicated values by sales comparison approach and the cost approach. Any personal property that is typically removed by the occupant upon departure should not be included in the final value of the property.

J. All appraisals shall clearly indicate the estimated Retrospective Market Value (RMV).

The Contractor will be responsible for contacting each property owner to schedule the appraisal and gain access. The property owner or their representative shall be given an opportunity to provide a tour of the subject property. A statement indicating whether the owner/representative of the property did or did not accompany the appraiser shall be contained in the appraiser’s certification. Contact names and telephone numbers of the property owners will be provided by the Village. Completed appraisals should be submitted to the Project Manager as they are finished.

It is preferable that appraisals be submitted to the Village (Project Manager) as they are completed (rather than all at once), to allow other professional services to begin their respective work on these properties.

The Residential Flood Buyout Program is strictly voluntary to property owners; thus any property owner may withdraw their application at any time. As a result, the actual number of appraisals may be less than seven (7). The Village will pay for all appraisals conducted, but will not order appraisals for those property owners who withdraw.

Other than what is provided in Paragraph 3 below, Village shall not be responsible for the cost of materials and equipment necessary for the performance of the Services.

No claim for services furnished by Contractor, not specifically provided for in this Agreement, shall be allowed by the Village nor shall Contractor perform any services or furnish any material not covered by this Agreement without prior written approval by Village. Such approval shall be considered a modification of this Agreement.

## 2. TERM AND TERMINATION

This Agreement shall be effective and binding from the date of its execution for an initial term of one (1) year (the "Initial Term") unless terminated earlier pursuant to the terms hereof. The Agreement may be renewed for one (1) separate and additional term of one (1) year (the "Renewal Term") upon the mutual written consent of the parties at least thirty (30) days prior to the expiration of the then current term. The Initial Term together with any Renewal Term shall collectively be referred to herein as the "Term." Either party may terminate this Agreement upon thirty (30) days prior written notice to other party. The Village shall have the right to immediate termination for the following reasons: loss of the appraiser's licensure, illegal or abusive behavior by the appraiser, failure of the appraiser to act in a timely manner which jeopardizes the project, loss of funding for the project and for any other breach of the contract terms. Upon termination of this Agreement, Village shall pay to Contractor, within thirty (30) days after the date of termination, all undisputed amounts owing to Contractor hereunder.

The parties' confidentiality and indemnification obligations set forth in this Agreement shall survive the termination of this Agreement.

## 3. FEES AND PAYMENT TERMS

All appraisals completed for each of the properties, by ownership, stated in Attachment A shall be paid for at the rate of \$\_\_\_\_\_ per improved property (may be multiple PIN numbers). Vacant properties, by ownership, shall be paid for at the rate of \$\_\_\_\_\_ per vacant property (may be multiple PIN numbers). The total contract shall be for a not to exceed cost of \$\_\_\_\_\_.

Contractor shall not incur any expenses or costs on behalf of the Village or in performing the Services, other than what is provided for above, unless Village specifically authorizes in advance such expenses or costs in writing. Such additional expenses may include, but are not limited to, travel and lodging expenses.

At the end of each calendar month or at such other time period as the parties shall determine, Contractor shall issue an invoice to Village for services rendered and Village shall remit payment of such invoice to Contractor within thirty (30) days of receipt, subject to Village's approval of the invoice.

Village shall pay interest at the rate of 1 percent per month on accounts that are past due. Village may withhold fees invoiced for Services to the extent such fees are disputed in good faith and provided that Village gives Contractor written notice and explanation of the good faith dispute within thirty (30) days of receiving the invoice. The parties shall work together to resolve any such dispute prior to the next invoice. If Village fails to send notice of a disputed item in a timely manner, Village shall be deemed to have accepted the item without reservation. If one or more items on an invoice are disapproved, but not the entire invoice, then the portion that is not disapproved shall be timely paid by the Village.

#### 4. RELATIONSHIP OF THE PARTIES

In performing Services hereunder, Contractor shall at all times act as an independent contractor and not as an agent or employee of Village. The Services shall be completed to the satisfaction of Village; however the actual details of the Services shall be under Contractor's control. Contractor is required to make appropriate filings with the taxing authorities to account for and make all payments required by local, state and federal authorities, including without limitation, income tax and social security payments. Contractor shall also comply, at its expense, with all applicable provisions of workers compensation laws, unemployment compensation laws, social security laws, the Fair Labor Standards Act and all other applicable federal, state and local regulations relating to the terms and conditions of employment required to be fulfilled by an employer. Contractor further agrees to indemnify and hold Village harmless for any and all claims made by the above mentioned authorities resulting from performance of Services by Contractor hereunder or otherwise arising out of Contractor's breach of the obligations contained in this paragraph.

Contractor is in no way authorized to make any agreement, warranty or representation on behalf of Village or to incur any expenses or implied obligation on behalf of Village without first obtaining Village's prior written consent.

#### 5. INSURANCE

At Contractor's sole expense, Contractor shall be required to maintain at all times, for the duration of this Agreement, insurance coverage issued by a company or companies qualified to do business in the State of Illinois with a Best's Rating of A or higher and with a Best's financial size category of Class XIV or higher, in the following types and amounts:

A. Commercial General Liability in a broad form, to include, but not limited to, coverage for the following where exposure exists: Bodily Injury and Property Damage, Premises/Operations, Independent Vendors, Products/Completed Operations, Personal Injury and Contractual Liability;

- limits of liability not less than: \$500,000 per occurrence and \$1,000,000 in the aggregate;

B. Business Auto Liability to include, but not be limited to, coverage for the following where exposure exists: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership; limits of liability not less than:

- \$1,000,000 per occurrence combined single limit for: Bodily Injury Liability and Property Damage Liability;

C. Workers' Compensation Insurance to cover all employees and meet statutory limits in compliance with applicable state and federal laws. The coverage shall also include Employer's Liability with minimum limits of \$100,000 for each incident.

D. Professional Liability Insurance with \$1,000,000 per occurrence and \$1,000,000 in aggregate.

Contractor agrees that with respect to the above-required insurance that Village shall be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of the Agreement and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. The contractual liability arising out of the Agreement shall be acknowledged on the Certificate of Insurance by the insurance company.

**In addition to being named as an additional insured on the Certificate of Insurance, each liability policy shall contain an endorsement naming Village as an additional insured. A copy of the endorsement shall be provided to Village along with the Certificate of Insurance.**

Village shall be named as an additional insured and the address for certificate holder shall read exactly as:

Village of Hamburg  
146 N. Washington St.  
P.O. Box 98  
Hamburg, IL 62045

Insurance Notices and Certificates of Insurance shall be provided to:

Village of Hamburg  
146 N. Washington St.  
P.O. Box 98  
Hamburg, IL 6204

## 6. INDEMNIFICATION

Each party (in such capacity the “Indemnifying Party”) hereby agrees to defend, indemnify and hold harmless the other party (in such capacity the “Indemnified Party”) and any of its subsidiaries and affiliates and the respective officers, directors and employees of each of the foregoing entities from and against all claims, demands, liabilities, losses, damages, suits, judgments, costs and expenses (including reasonable attorney’s fees and costs of defense) in any manner arising out of or resulting from performance of the Services contemplated herein, provided that any such claim, demand, liability, loss, damage, suit, judgment, cost or expense (1) is attributed to bodily injury, sickness, disease or death of any person, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused by any act or omission of the Indemnifying Party, its employees or agents, any approved subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

Furthermore, Contractor agrees to defend, indemnify and hold Village harmless from and against all claims, demands, liabilities, losses, damages, suits, judgments, costs and expenses (including reasonable attorney’s fees and costs of defense) in any manner arising out of the infringement or alleged infringement of any United States patent, trademark, trade dress, copyright or other intellectual property arising out of the Services provided by the Contractor to Village.

## 7. CONFIDENTIALITY

Each party to this Agreement may from time to time disclose (in that capacity "Discloser") to the other party (in that capacity "Recipient") information which Discloser regards as confidential. For the purposes of this Agreement, “Confidential Information” means any information that a party designates as confidential, is required by law to remain confidential, or which the receiving party knows or has reason to know is confidential.

Each party agrees to maintain in confidence and not disclose to any other person or entity or utilize, directly or indirectly, any Confidential Information disclosed by the other party in connection with this Agreement or the discussions and negotiations leading thereto except information which is (i) already known and not received from the other party in the course of negotiating or fulfilling this Agreement, (ii) information which becomes generally available to the public through no fault of the party who wishes to utilize the information, (iii) information received from a non-party who has the right to disclose such information without breaching any obligations to the other party, or (iv) information which a party is legally obligated to disclose.

Disclosure of Confidential Information shall be permitted if such disclosure is in response to a valid order of a court or other governmental body of the United States, any State, or any political subdivision thereof or is otherwise required to be disclosed by law (including the Freedom of Information Act). Contractor agrees to waive any and all potential claims or causes of action against the Village and its employees arising out of the Village's disclosure of Contractor's Confidential Information when such disclosure is made pursuant to the Freedom of Information Act.

The Recipient agrees that it will (a) use such Confidential Information of the Discloser only to carry out the services contemplated by this Agreement, (b) disclose such Confidential Information only to employees who have a reasonable need for such information, (c) instruct all employees who have access to Discloser's Confidential Information of the necessity to maintain the confidentiality of such information, (d) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in no event less than a reasonable degree of care, and (e) return or destroy all such Confidential Information upon request of the Discloser.

#### 8. OWNERSHIP OF WORK PRODUCT

Contractor agrees that all work product produced by Contractor hereunder, including, without limitation, all reports and other documents ("Work Product") shall be deemed to be works made for hire under U.S. copyright laws and that all right, title, and interest in and to the Work Product shall be the sole property of Village and Village shall have the exclusive right to the copyrights on the Work Product. To the extent that the Work Product is not deemed to satisfy the requirements for a work made for hire under U.S. copyright laws, Contractor hereby assigns to Village all copyrights the Work Product and agrees to execute any additional documents requested by Village to further such assignment at no additional cost to Village. Contractor warrants that the Work Product shall not infringe the patent, copyright or other intellectual property or proprietary right of any third party and agrees to defend, indemnify and hold Village harmless against any such third party claim.

#### 9. NON-APPROPRIATION OF FUNDS

This Agreement is made subject to available budgetary appropriations and shall not create any obligation on behalf of the Village in excess of such appropriations. In the event that no funds or insufficient funds are appropriated and budgeted, this Agreement shall terminate without penalty or expense to the Village. Notwithstanding any other provision in this contract, in the event that funding for any aspect of this project cannot be obtained, this contract shall immediately terminate upon notification by Village to Appraiser of the lack of funds. In such event, any services rendered but not billed as of the time of the notification shall not be compensable.

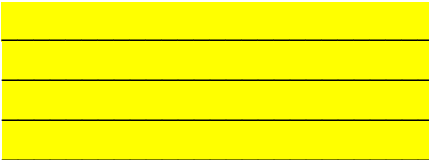
10. ASSIGNMENT AND SUBCONTRACTING

This Agreement shall not be assigned by Contractor without prior written approval of the Village, subject to such conditions and provisions as the Village may deem necessary in its sole and absolute discretion. No such approval by the Village of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Village in addition to the total agreed upon price. Approval by the Village of an assignment shall not be deemed a waiver of any right accrued or accruing against Contractor. No assignee of Contractor shall assign this Agreement without prior written approval of the Village. This Agreement shall be binding upon the parties and their respective heirs, successors, and assigns. Furthermore, Contractor shall not enter into any subcontract with any agency or individual with respect to the performance of Services under this Agreement without the written consent of the Village. Such consent Village may grant, condition or withhold in Village's sole discretion.

11. NOTICE

All notices and other communications required to be given under the Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered; (ii) three (3) business days after mailing, postage prepaid, by certified mail; or (iii) when delivered (and receipted for) by an overnight delivery service, addressed in each case to the parties at the addresses set forth below.

If to Village: Village of Hamburg  
146 N. Washington St.  
P.O. Box 98  
Hamburg, IL 6204

If to Contractor: 

12. GOVERNING LAW AND VENUE

The parties agree this Agreement has been executed and delivered in Illinois and that their relationship and any and all disputes, controversies or claims arising under this Agreement shall be governed by the laws of the State of Illinois, without regard to conflicts of laws principles. The parties further agree that the exclusive venue for all such disputes shall be the Circuit Court of the 8th Judicial District, County of Calhoun, Illinois, and the parties hereby consent to the personal jurisdiction thereof.

13. COMPLIANCE WITH LAWS

Each party hereto covenants and agrees to comply with all applicable federal, state, and local laws, codes, ordinances, rules and regulations.



14. SEVERABILITY

The invalidity or unenforceability of any particular word, phrase, sentence, paragraph or provision of this Agreement shall not affect the other words, phrases, sentences, paragraphs or provisions hereof. This Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted and the remainder construed so as to give them meaningful and valid effect. It is the intention of the parties that if any particular provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

15. WAIVER

Either Party’s failure to insist upon strict compliance with any provision hereof or its failure to enforce any rights or remedy in any instance shall not constitute or be deemed to be a waiver of any provision, right or remedy.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with regard to the subject matter contained herein and supersedes all prior agreements and understandings between the parties dealing with such subject matter, whether written or oral. No agreement hereafter made between the parties shall be binding on either party unless reduced in writing and signed by the party sought to be bound thereby.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above. By signing said agreement, the Appraiser hereby certifies that he is licensed as so designated in this contract and competent to preform this agreement and will do so in a expeditious manner.

**The Village of Hamburg**

**[Name of Entity and Corp. Designation]**

By: \_\_\_\_\_  
Village of Hamburg, Mayor

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

Printed Name: Eric Benoist

Printed Name: \_\_\_\_\_

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

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

**ATTACHMENT A**

**Village of Hamburg  
List of Potential Acquisition Sites**

<b>Property Address</b>	<b>PIN</b>
0 Water St.	07-05-35-201-146
3 Water St.	07-05-35-100-023
5 Water St.	07-05-35-201-147
234 N. Water	07-05-35-100-103
410 N. Water	07-05-35-100-025
400 N. Washington	07-05-35-201-151
406 N. Washington	07-05-35-201-152