

**INSURANCE BROKER SERVICES AGREEMENT  
BETWEEN THE VILLAGE OF CARPENTERSVILLE  
AND ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**

THIS INSURANCE BROKER SERVICES AGREEMENT ("**Agreement**") is made and entered into as of the first day of October, 2016 ("**Effective Date**"), by and between the **VILLAGE OF CARPENTERSVILLE**, an Illinois home rule municipal corporation ("**Village**"), and **ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**, an Illinois corporation ("**Broker**") (collectively, the Village and the Broker are the "**Parties**").

IN CONSIDERATION OF, and in reliance upon, the recitals and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and the Broker mutually agree as follows:

**SECTION ONE. RECITALS.**

A. The Village issued a Request for Proposals ("**RFP**"), requesting the submission of proposals for the provision of insurance broker services to the Village in accordance with certain specifications.

B. The Village has reviewed the responses to the RFP, and has determined that the proposal submitted by the Broker is the most appropriate for the provision of insurance broker services to the Village.

C. The Parties desire to enter into an agreement for the provision of insurance broker services by the Broker to the Village, in accordance with certain specifications.

D. The Parties desire to enter into this Agreement in order to memorialize the Parties' respective rights and responsibilities.

**SECTION TWO. RULES OF CONSTRUCTION.**

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

B. **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.

C. **Calendar Days.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" means 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.

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\* All capitalized words and phrases throughout this Agreement have the meanings set forth in the preamble above and in the other provisions of this Agreement.

**SECTION THREE. SELECTION OF, AND ACCEPTANCE BY, THE BROKER.**

The Village hereby confirms the selection of the Broker as the party designated to provide insurance broker services to the Village in the manner set forth in this Agreement. The Broker hereby accepts the selection and agrees to provide insurance broker services to the Village in the manner set forth in this Agreement.

**SECTION FOUR. PROVISION OF INSURANCE BROKER SERVICES.**

**A. General Provisions of Agreement.** Except as specifically provided in the text of this Agreement, the Broker hereby agrees to provide the following insurance broker services to the Village ("**Services**"), as more specifically set forth in the Broker's proposal, a copy of which is attached to this Agreement as **Exhibit A ("**Broker Proposal**")**:

1. Develop an insurance marketing strategy, prepare insurance coverage specifications for the Village, and assist the Village in preparing underwriting applications;
2. Solicit bids from insurance carriers with consideration of their A.M. Best rating;
3. Review all insurance policies received from the carriers for completeness and correctness prior to forwarding them to the Village's Risk Management personnel;
4. Analyze all bids, and provide the Village a summary of the bids received;
5. Conduct meetings with the Village to: (i) identify areas of risk exposure and concern; (ii) establish goals; (iii) set priorities; and (iv) establishing insurable values;
6. Conduct insurance policy renewal negotiations and analysis, including assisting the Village in making budget projections and structuring deductibles and other retention methods for standard programs and alternative risk funding programs (including captives);
7. Evaluate the Village's insurance programs in light of industry trends, claims history, loss development, legal or regulatory requirements, and market conditions;
8. Review the Village's current loss prevention activities, make recommendations for improvement, and assist in development of the risk management loss control services in conjunction with the Village's current loss control services provider;
9. Submit, monitor, and advocate claims on behalf of the Village, and provide status of claims and reserves, loss frequency, loss trending, and severity forecasts;

10. Manage carrier relationships, review services provided by the carriers, and compare their actions to the agreed-upon standards; and work to correct any deviations from agreed-upon standards of performance;
11. Assist in compliance activities related to property and casualty coverage, and provide property valuation services;
12. Review the Village's contracts, indemnification/hold harmless agreements, and like items congruous to vendors/suppliers/clients;
13. Conduct account management meetings to review goals and service needs on an as needed basis;
14. Act as a technical resource by providing regular updates on current market conditions and trends and any current risk management trends that may affect the Village;
15. Prepare insurance summaries or comparisons of current and prior coverage and premiums;
16. If requested, review any of the Village's risk management, claims or safety manuals, and make recommendations for improvement;
17. Prepare insurance certificates as needed;
18. Review leases or other contracts to determine insurance requirements and compliance by the Village;
19. Participate in and advise on claims administration, litigation management, and actuarial/loss forecasting analysis; and
20. Work with the Village's current workers' compensation and general liability third party administrators.

**B. Quality of Work.** The Broker must provide, perform, and complete all of its obligations under this Agreement, or cause all of its obligations to be provided, performed and completed, in a proper and professional manner, consistent with the standards of professional practice and in full compliance with, and as required by or pursuant to, this Agreement.

**C. Corrections.** The Broker is and will be responsible for the quality, technical accuracy, completeness, and coordination of all reports, documents, data, information and other items and services under this Agreement. The Broker must promptly provide, to the satisfaction of the Village, all corrective services necessary as a result of the Broker's errors, omissions, negligent acts, or failure to meet warranty.

**D. Compliance with Law.** The Broker must provide the Services and perform all of its obligations under this Agreement in compliance with all applicable laws and regulations.

**SECTION FIVE. VILLAGE CONFIDENTIAL INFORMATION AND DOCUMENTS.**

A. **Confidential Information.** The term "***Confidential Information***" means 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 does not include information that can be demonstrated: (1) to have been rightfully in the possession of the Broker from a source other than the Village prior to the time of disclosure of said information to the Broker 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 Broker; or (4) to have been supplied to the Broker 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 Broker.** The Broker acknowledges that it will, in performing the Services for the Village under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Broker must hold confidential all Confidential Information and must not disclose or use such Confidential Information without express prior written consent of the Village; provided, however, that no such prior consent is required for the disclosure by the Broker of Confidential Information, to the extent required for the provision of the Services, to persons, firms, or corporations: (1) providing insurance to the Village as of the date of the disclosure; (2) providing third-party insurance administration services to the Village as of the date of the disclosure; or (3) from which the Village has directed that the Broker obtain information about insurance policies and/or coverages available to the Village. The Broker must use reasonable measures at least as strict as those the Broker uses to protect its own confidential information. Such measures must include, without limitation, requiring employees and subcontractors of the Broker to execute a non-disclosure agreement before obtaining access to Confidential Information. This Section is not to be deemed to restrict the Broker from giving notices required by law or complying with an order to provide information or data when such order is given by a court, administrative agency or other authority with proper jurisdiction.

C. **Village Documents.** 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 Broker in connection with any or all of the Services to be performed under this Agreement ("***Documents***") are and will remain the exclusive property of the Village. At the Village's request, or upon termination of this Agreement, the Broker must cause the Documents to be promptly delivered to the Village. The Broker may retain copies of any documents directly prepared or created by the Broker. This Section 5.C will survive the termination of this Agreement.

**SECTION SIX. TERM.**

A. **Term.** This Agreement shall commence on the Effective Date for a term of one (1) year and shall automatically renew on the first anniversary of the Effective Date and annually thereafter for an additional three (3) one year terms

**B. Early Termination.** The Village may terminate this Agreement by giving written notice to the Broker at least 30 calendar days prior to the proposed termination date. The Broker will be entitled to just and equitable compensation for any satisfactory work completed prior to the termination date. Under no circumstances will any damages be paid as a result of the termination of this Agreement.

#### **SECTION SEVEN. COSTS AND FEES.**

**A. Annual Fee.** Notwithstanding any conflicting provision in any Exhibit attached to this Agreement, the Village will pay the Broker an annual fee of \$32,000.00 in exchange for the provision by the Broker of the Services, less the amount of any commissions received by Broker on insurance policies procured for the Village, as set forth in the Broker Proposal.

**B. Changes in Costs and Fees.** The Parties acknowledge and agree that all costs and fees specified in this Agreement or in any Exhibit thereto will not increase or decrease during the term of this Agreement without the prior express written consent of each of the Parties.

**C. Additional Services.** The Broker may not implement or provide any services outside the scope of this Agreement or any Exhibit thereto prior to: (1) delivery by the Broker to the Village of a written proposal, including costs and fees, for the additional services; and (2) receipt of prior written consent by the Village of the proposal.

#### **SECTION EIGHT. WAIVER OF BREACH.**

A waiver by the Village or the Broker of a breach by any party to this Agreement of any covenant or condition of this Agreement will not impair the right of the party or parties not in default to avail itself or themselves of any subsequent breach thereof. Leniency, delay, or failure of the party or parties to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right within this Agreement given in any one or more instances, is not to be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

#### **SECTION NINE. REPRESENTATIONS AND WARRANTIES.**

**A. By the Village.** The Village represents and warrants to the Broker as follows:

1. The Village has the authority and the legal right to make, deliver, and perform this Agreement, and has taken or will take all necessary actions and obtain all required consents and approvals to authorize the execution, delivery, and performance of this Agreement.

2. To the best of the knowledge of the legal representatives of the Village, the execution, delivery, and performance of this Agreement is not prohibited by any requirement of law or under any contractual obligation of the Village, will not result in a breach or default under any agreement to which the Village is a party or is bound, and will not violate any restriction, court order, or agreement to which the Village is subject.

3. The parties executing this Agreement on behalf of the Village and executing and delivering any other agreement or other item contemplated by this Agreement or

otherwise required to fulfill the Village's obligations under this Agreement, have full authority to bind the Village to such obligations and to so act on behalf of the Village.

4. To the best of the knowledge of the legal representatives of the Village, as of the Effective Date of this Agreement, there are no actions or proceedings by or before any court, governmental commission, board or bureau or any other administrative agency pending or being threatened against the Village that would impair the Village's ability to perform its obligations under this Agreement.

**B. By the Broker.** The Broker represents and warrants to the Village as follows:

1. The Broker has the authority and the legal right to make, deliver, and perform this Agreement, and has taken or will take all necessary actions and obtain all required consents and approvals to authorize the execution, delivery, and performance of this Agreement.

2. To the best of the knowledge of the legal representatives of the Broker, the execution, delivery, and performance of this Agreement is not prohibited by any requirement of law or under any contractual obligation of the Broker, will not result in a breach or default under any agreement to which the Broker is a party or is bound, and will not violate any restriction, court order, or agreement to which the Broker is subject.

3. The parties executing this Agreement on behalf of the Broker and executing and delivering any other agreement or other item contemplated by this Agreement or otherwise required to fulfill the Broker's obligations under this Agreement, have full authority to bind the Broker to such obligations and to so act on behalf of the Broker.

4. To the best of the knowledge of the legal representatives of the Broker, as of the Effective Date of this Agreement, there are no actions or proceedings by or before any court, governmental commission, board or bureau or any other administrative agency pending or being threatened against the Broker that would impair the Broker's ability to perform its obligations under this Agreement.

#### **SECTION TEN. INDEMNIFICATION.**

**A. Indemnification.** Without regard to the availability or unavailability of any insurance of the Village, the Broker must, and hereby agrees to, indemnify the Village, and its respective officers, members, officials, employees, agents, attorneys, and representatives against, and hold the Village, and its respective officers, members, officials, employees, agents, attorneys, and representatives, harmless from, any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses (including attorneys' fees and administrative expenses), that may be sustained or incurred as a result of or in connection with the Broker's performance of, or failure to perform, its obligations under this Agreement, but not including lawsuits, claims, demands, damages, liabilities, losses, and expenses (including attorneys' fees and administrative expenses), sustained or incurred solely as a result of the negligence or willful misconduct of the Village. The Broker's obligations required pursuant to this Section 10.A will survive the termination of this Agreement.

**B. Insurance.** The Broker must provide, at its sole cost and expense, insurance of the types and in the amounts set forth in **Exhibit B**, which insurance shall include, without limitation, protection for all activities associated with the Services. The Broker must cause the

Village to be named as an additional insured on the General Liability policy described in this Section 10.B. On or before January 1, 2017, the Broker must provide the Village with either: (1) a copy of the entire insurance policy; or (2) a Certificate of Insurance. The insurance coverages and limits set forth in this Section 10.B are to be deemed to be minimum coverages and limits and are not to be construed in any way as a limitation on the Broker's duty to carry adequate insurance or on the Broker's liability for losses or damages under this Agreement.

**SECTION ELEVEN. ENFORCEMENT.**

A. **General.** The Parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, enforce this Agreement.

B. **Prevailing Party.** In the event of a judicial proceeding brought by one or more Parties against any or all of the other Parties, the prevailing Party or Parties in such judicial proceeding will be entitled to reimbursement from the unsuccessful Party or Parties of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

C. **No Personal Liability.** The Broker acknowledges and agrees that no elected or appointed official, agent, representative, employee or attorney of the Village will or may be personally liable, in law or in contract, to the Broker as the result of the execution of this Agreement.

**SECTION TWELVE. GENERAL PROVISIONS.**

A. **Notices.** All notices required or permitted to be given under this Agreement must be given by the Parties by (i) personal delivery, (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon, or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section. The address of any Party may be changed by written notice to the other Parties. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received within 24 hours after deposit. Notices and communications to the Parties shall be addressed to, and delivered at, the following addresses:

If to the Village: Village of Carpentersville  
1200 L.W. Besinger Dr.  
Carpentersville, IL 60110  
Attention: Finance Director

With a copy to: Holland & Knight LLP  
131 S. Dearborn Street, 30<sup>th</sup> Floor  
Chicago, IL 60603  
Attention: Hart M. Passman, Village Attorney

If to the Broker: Arthur J. Gallagher Risk Management  
Services, Inc.  
Corporate Headquarters  
The Gallagher Centre  
Two Pierce Place  
Itasca, IL 60143  
Attention: Jessica Govic & Rich Stokluska

**B. Relationship of the Parties.** The Broker will act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement is to be construed: (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and the Broker; or (2) to create any relationship between the Village and any subcontractor of the Broker.

**C. Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**D. 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 are cumulative and are not exclusive of any other rights, remedies, and benefits allowed by law.

**E. Binding Effect.** This Agreement and the privileges, obligations, and provisions contained herein inure to the benefit of, and are binding upon, the Village, the Broker, and their heirs, personal representatives, and successors.

**F. Assignment.** Neither the Village nor the Broker may assign this Agreement, in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written approval of the other party, which approval may be withheld in the sole and unfettered discretion of the other party.

**G. Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent must be in writing.

**H. Governing Law.** This Agreement is to be governed by, construed, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**I. Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property will not be impaired thereby, but the remaining provisions are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

**J. Entire Agreement.** This Agreement and the Exhibits thereto constitute the entire agreement of the Parties relative to the subject matter of this Agreement, expressly



superseding all prior agreements and negotiations between and among the Parties, whether written or oral, relating to the subject matter of this Agreement.

K. **Interpretation.** This Agreement is to 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 is to 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 is not applicable to this Agreement.

L. **Exhibits.** Exhibits A and B attached to this Agreement are, by this reference, incorporated into, and made a part of, this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement controls.

M. **Amendments and Modifications.** No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by the Village and the Broker in accordance with all applicable statutory procedures.

N. **Changes in Laws.** Unless otherwise provided in this Agreement, any reference to existing law is to be deemed to include any modifications of, or amendments to, existing law that may occur in the future.

O. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation may be made, or be valid, against the Village or the Broker.

P. **Counterpart Signatures.** This Agreement may be executed in any number of counterparts, each of which is to be deemed to be an original, but all of which together will constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

Sonia DePalazzo  
Therese Witte, Village Clerk  
SONIA DEL PALAZZO, DEPUTY CLERK

VILLAGE OF CARPENTERSVILLE

By: J. Mark Rooney  
J. Mark Rooney, Village Manager

ATTEST:

By: Alison Sculita  
Its: Client Services Manager

ARTHUR J. GALLAGHER RISK  
MANAGEMENT SERVICES, INC.,  
an Illinois corporation

By: Eric P.  
Its: Area President

**ACKNOWLEDGMENTS**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )  
 MCHENRY

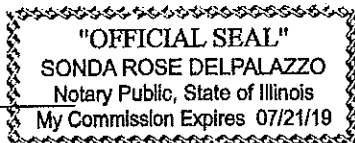
This instrument was acknowledged before me on 29 Sept 2016 2016, by J. Mark Rooney, the Village Manager of the VILLAGE OF CARPENTERSVILLE, an Illinois municipal corporation, and by Therese Wilde, the Village Clerk of said municipal corporation.

*Sonda Rose Delpalazzo*

Signature of Notary

SEAL  
My Commission expires:

July 21, 2019



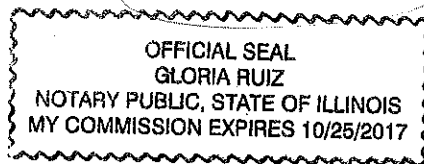
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me on 1 Oct 2016, by ERIC PAN, the Area President of ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., an Illinois corporation, and by Alicia Suleta, the Client Service Manager of said corporation.

*Gloria Ruiz*  
Signature of Notary

SEAL  
My Commission expires:

10/25/2017



**EXHIBIT A**  
**BROKER PROPOSAL**

Exhibit A-1

**EXHIBIT B**

**INSURANCE COVERAGE**

<u>Type of Insurance</u>	<u>Minimum Required Coverage</u>
Worker's Compensation	Statutory
Professional	\$5,000,000
General Liability	\$1,000,000 / \$2,000,000
Umbrella	\$5,000,000
Errors and Omissions	\$10,000,000

Exhibit B-1

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