




POLICY AND PROCEDURE STATEMENT

SUBJECT CONTRACTUAL, SCOPE OF EMPLOYMENT	PAGE 1 OF 8	DATE EFFECTIVE JULY 1, 2018
SECTION/POLICY NO. 2.03	APPROVED BY  MAYOR	SUPERSEDES VOA II-E, OCTOBER 1, 2003
PREPARED BY VILLAGE ADMINISTRATOR	 VILLAGE ADMINISTRATOR	APPROVAL DATE ISSUE DATE 12/31/2017 REVIEW DATE
REFERENCE	 PERSONNEL/BENEFIT COMMITTEE	DISTRIBUTION LIST WEBSITE, MAYOR, COUNCIL CLERK- TREASURER, AND VILLAGE EMPLOYEES

SCOPE

- I. This Policy applies to Ashville Personnel, Ashville Government, and Contract Staff.

POLICY

- I. The Village of Ashville will at times engage services by means of an Independent Contract. The Village of Ashville strives to ensure the best-qualified party is contracted.
- II. This policy applies to anyone wishing to contract for services to be paid by the Village regardless of the source of funds. This policy supersedes all previous policies. A department intending to engage a service provider as a consultant, or independent contractor must follow Village approval and contracting procedures prior to the start of any work or performance of services.
- III. Individuals currently or formerly (within the calendar year) employed by the Village may not provide services to Village as an independent contractor. Please refer to the section on Current and Former Village Employees.
- IV. A professional services agreement is a contract. Changing the terms and conditions of an existing contract requires the completion of an Amendment to Professional Services Agreement (PSA) form. A contract cannot be amended after it has expired or once the contract amount has been spent. If the original contract period has passed, a new contract is required for the performance of additional services by the same supplier

PURPOSE

- I. To provide protection to the Village of Ashville and define the relationship between the village and the contracting party.
- II. When hiring individuals as consultants/independent contractors, the designation of independent contractor status is governed by the Internal Revenue Service (IRS) tax code and common law. Significant tax penalties exist for incorrect classification of an employee as an independent contractor. In addition, contracting with consultants and independent contractors may expose the Village to significant risk. Therefore, it is imperative that common standards are applied in classification and contracting, and that each case is fully documented and auditable. Use the Determination of Status Form to assist in making the determination.
- III. In addition, the contracts used to engage consultants and independent contractors are important legal documents that serve to clarify responsibility and expectations which are important protections to both parties in the contract.

PROCEDURE

I. Responsibilities

- a. For The Village of Ashville representative initiating a professional services agreement:
 - Review each professional services agreement for content and compliance with policy
 - Determine appropriate status (independent contractor vs. employee)
 - Ensure that an approved contract is in place before service is provided. (PSA or contract developed by solicitor)
 - Follow appropriate procedures for payment.
 - Follow Village signature authority policy and/or legislation for PSA's
- b. Projects - For professional services agreements charged to grants or contracts:
 - Review all professional services agreements charged to grants and contracts to ensure that the service provided falls within provisions of the funding agency.
- c. Office of the Village Solicitor:
 - Review professional services agreements in excess of \$50,000 or that established by Ordinance or Ohio Revised Code.
 - Draft specialized professional services agreement for any service where the standard professional services agreement does not meet the needs of the department or, for services that require specialized contract language. (Such as: construction, fundraising, investment services, computer programming/software development, advertising/marketing, performance or visual arts, social media/web services).
 - Review and approve professional services agreements/contracts that are not on a Village standard form, regardless of the amount. (Village Administrator and Fiscal Officer also review contracts that their areas have been authorized to approve).
 - Review amendments that cause the total value of the PSA to exceed \$50,000 or that established by Ordinance or Ohio Revised Code.
- d. Independent Contractor Responsibilities:
 - Provide detailed and accurate information for determination of status and contract formulation.
 - Be in receipt of a signed professional services agreement or purchase order prior to providing services.
 - Provide appropriate documentation (an invoice) for payment of services.
- e. Determination of Status Procedure
 - When hiring an individual, a determination must be made as to whether the service provider will be an employee of the Village or an independent contractor. The Determination of Proper Status section of the PSA template for individuals provides questions that assist Village personnel in making the correct relationship determination. Proper classification of a service provider ensures that the Village is in compliance with the following: the Fair Labor Standards Act and Immigration and Naturalization Service's regulations, as well as statutes regarding income tax withholding, unemployment insurance taxes, Social Security, OPERS and Medicare taxes. A misclassification may result in taxes, interests, and penalties being assessed by the IRS. If this happens, departments will be billed for their proportional taxes, interests, and penalties.

II. Procedures

- a. Office of the Village Solicitor may develop templates for PSA's
 - Professional Service/Consultant Agreements up to \$5,000 (abbreviated PSA)
 - Professional Service/Consultant Agreements over \$5,000 (choose the version for individual consultants or company)
- b. Fees paid to consultants/independent contractors who are US residents and earn more than \$600 in a calendar year, will be reported to the IRS and the individual will receive an IRS Form 1099 Misc. (Miscellaneous Income) for tax purposes. Fees paid to consultants/independent contractors who are foreign nationals will be reported to the IRS and the individual will receive an IRS Form 1042S for tax purposes.
- c. The solicitor will develop specialized contract templates for some areas, departments and the Village.

- d. Professional Services Agreements are not required for Standard Services. Standard Services are services that are routinely provided to a large number of customers usually at published rates without significant customizing. Some examples of this type of service are: repair services, small equipment rental, and laboratory testing services. A professional services agreement is not required for this type of work. For these types of services, the bid or quote for services to be provided, in combination with a Village issued purchase order, with standard Village terms and conditions, will serve as the contract.
- e. Processing of an Amendment to Professional Services Agreement will follow the same procedure as the original contract. However, if the fee for the service to be performed changes, and is greater than the original contract, the approval and payment process for the new category will govern.
- f. Amendments to Professional Service Agreements are submitted to Fiscal Officer if the total value of the contract will remain less than \$50,000. If the Amendment causes the total value of the PSA to an amount greater than \$50,000, the amendment must be reviewed by solicitor.
- g. Amendments to a contract originally processed using a Supplier Invoice (less than \$5,000) require the completion of the Payment Authorization section of the Amendment to Professional Services Agreement.
- h. Amendments to a contract originally processed using a Purchase Order (greater than \$5,000) require the completion of the Purchase Order Change Authorization section for the Amendment to Professional Services Agreement. The documentation for the amendment should be forwarded to the Fiscal Officer for processing.
- i. EXCEPTIONS TO THE INDEPENDENT CONTRACTOR STATUS CLASSIFICATION
 - i. Current and Former Village Employees -If the service provider you wish to hire is a current employee, a former employee (paid through Village payroll during the current calendar year) or is providing a service the same as or similar to that of a current employee, he or she will be paid as an employee and not as an independent contractor. Contact the solicitor for assistance when a current or former employee is being considered for a contractual service.
 - ii. Fees, Prizes, and Royalty Payments
 - iii. The following types of payments are not for services performed. Submit a request for check form for payment.
 - iv. Prize or Premium - a reward or gift of money for a competition or other achievement.
 - v. The following types of payments are for services performed by a service provider but do not require "determination procedures." Such one-time payments are typically of a fixed, minimal amount and are taxable to the recipients:
 - 1. Participation Fee - payment for participating in surveys, seminars or research projects.
- j. Signatures and Signature Authority for Professional Service Agreements
 - i. The Village approved authority to execute contractual agreements for professional services (i.e. consultants, independent contractors). The Village approved authorization in the following manner, and in accordance with the administrative procedures and requirements stated below. This expanded authorization improves the processing of these agreements by creating a better assignment of authority with responsibility. The authorization is structured along organizational lines with some delegation allowed within the units identified below. This signature authority applies to agreements funded from any source of funds, including grant/contract funds.
 - ii. The "Authorization to Execute Professional Service Agreements Form" must be completed and returned to the Fiscal Officer in order for this signature authority to be granted. Contact the Fiscal Officer to obtain the proper form.
 - iii. Agreements funded from non-grant/contract funds in excess of \$50,000 must be reviewed by the Solicitor prior to execution including those utilizing the Village's template for Professional Service Agreements located on the Village's website. Any agreement, regardless of the amount, which is not written on the Standard Agreement Form must be reviewed by the Solicitor prior to execution. (Exceptions are contracts managed through another qualifying government entity or contracts for goods or standard services that are managed through the Fiscal Officer).
 - iv. All agreements funded from grant/contract funds require review, for budgetary and sponsor allow ability.

Independent Contractor Agreement

(Date)

Independent Contractors:

To be eligible to do contract work for the Village of Ashville we will need to have a copy of your Proof of Insurance on file with the Village of Ashville listed as the Additional Insured. Please provide us a copy of your Certificate of Insurance for the following:

Comprehensive General Liability

Comprehensive Automobile

Workers' Compensation

Please ask your Insurance Agent to keep the Certificate of Insurance on file with our office current.

Thank you. If you have any questions, please call our office.

Sincerely,

****sample****

AGREEMENT

This Agreement is made and entered into this (Date), by and between the Village of Ashville in Pickaway County, Ohio, hereinafter referred to as "Entity", and (Contractor), an INDEPENDENT CONTRACTOR, hereinafter referred to as "Contractor."

In consideration of the mutual agreements hereinafter contained and subject to the terms and conditions hereinafter stated, it is hereby agreed by the parties as follows:

A. Contractor will perform the following services for Entity:

- ♦
- ♦

B. Entity shall pay for said work in the following manner:

- ♦
- ♦

Notwithstanding the same, the Entity may terminate this agreement by giving thirty days written notice to Contractor. Notwithstanding the same, the (Entity) may terminate this agreement five days' notice to Contractor for unsatisfactory performance.

Contractor hereby represents that he is an independent contractor and the parties hereby agree that this is not an employment contract and Contractor is not an employee of the Entity. Entity shall provide no employment benefits whatsoever to Contractor, to-wit: no unemployment, insurance, health insurance, retirement or Worker's compensation. Contractor is responsible for payment of all applicable taxes, including federal, state, and local taxes. Contractor agrees to fully indemnify and hold harmless the Entity, its officers, agents and employees from any and all obligations or liability which may arise as a direct or indirect consequence of Contractor's performance of this agreement and the service agreed to be performed by Contractor herein. Contractor will name the Entity as additional insured on its insurance policy. No contract will be accepted without this agreement.

Contractor shall abide by all applicable laws and regulations including local, state, and federal.

The Contractor shall provide or have on file with the Entity (a copy of which shall be attached to this agreement) a certificate of insurance for the following when applicable:

<u>Type of Insurance</u>	<u>Applicability</u>	
	<u>Yes</u>	<u>No</u>
Comprehensive General Liability (General Aggregate at least \$500,000)	___	___
Comprehensive Automobile Liability (Combine Single Limit at least \$300,000)	___	___
Workers Compensation	___	___

All work shall be completed in a workmanship like manner and in compliance with all building codes and other applicable laws.

To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said work.

Contractor may at its discretion engage subcontractors to perform work hereunder, provided Contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of the Contract.

Contractor shall furnish Owner appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due.

All change orders shall be in writing and signed to by Owner and Contractor.

Contractor warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor, its employees, and subcontractors.

Contractor shall at its own expense obtain all permits necessary for the work to be performed.

Contractor warrants all work for a period of months following completion.

Contractors who have employees must provide proof of Workers' Compensation coverage. Contractors who employ or use independent contractors or subcontractors must provide their identity and proof of appropriate insurance coverage satisfactory to the Entity

Witnesses: Village of Ashville

By: Village of Ashville

Witnesses:

Contractor

Title:

Address: _____

Title:

Address: _____

3. INDEMNIFICATION REQUIREMENTS

I. MINIMUM INSURANCE REQUIREMENT

- A. Prior to the time the CONTRACTOR is entitled to commence any part of the project, work, or services under this contract, the CONTRACTOR shall procure, pay for and maintain at least the following insurance coverage and limits. Said insurance shall be evidenced by delivery to the OWNER of:
- (1) Certificates of Insurance executed by the insurer's listing coverage and limits, expiration dates, and terms of policies and all endorsements whether or not required by the OWNER and listing all carriers issuing said policies; and
 - (2) A Certified Copy of each policy including all endorsements. The insurance requirements shall remain in effect throughout the term of this contract.
 - (3) WORKMEN'S COMPENSATION as required by law; EMPLOYER'S LIABILITY INSURANCE of not less than \$2,000,000 for each accident.
 - (4) COMPREHENSIVE GENERAL LIABILITY INSURANCE including, but not limited to INDEPENDENT CONTRACTOR, CONTRACTUAL PREMISES AND/OR OPERATIONS, and PERSONAL INJURY covering the liability assumed under indemnification provisions of this Contract, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$1,000,000, each occurrence; and property damage of not less than \$1,000,000, each occurrence. (Combined Single Limits of not less than \$1,000,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability of not less than \$5,000,000, per occurrence, unless otherwise stated by exception herein.
 - (5) COMPREHENSIVE AUTOMOBILE AND TRUCK liability covering owned, hired, and non-owned vehicles with minimum limit of \$1,000,000, each occurrence, and property damage of not less than \$1,000,000. (Combined Single Limits of not less than \$1,000,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards.
 - (6) EXCESS LIABILITY Umbrella Form \$2,000,000 combined single limits, personal injury and/or bodily injury, including death, and property damage liability insurance as an excess of the primary coverage required above.
- B. Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to the OWNER by Certified mail.
- (1) The CONTRACTOR shall also notify the OWNER in a like manner, with in twenty-four (24) hours after receipt, of any notices of expiration. Cancellation, non-renewal or material change in coverage received by said CONTRACTOR from its insurer; and nothing contained herein shall absolve the CONTRACTOR of this requirement to provide notice.
 - (2) Companies issuing the insurance policy, or policies, shall have no recourse against the OWNER for payments of premiums or assessments for any deductibles which all are at the sole responsibility and risk of CONTRACTOR.
 - (3) The term ENTITY, or TANK OWNER or OWNER shall include all Authorities, Agents, Boards, Bureaus, Commissions, Divisions, Departments, and officers of the OWNER and all individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the Village of Ashville, OH.

- (4) The OWNER and CONTRACTOR and each of their officers, agents, and employees must be endorsed as additional insured on all General Liability, Automobile Liability, and Excess Liability policies for a period from before the start of this project and for a period of one (1) year after the completion date of this project.
- (5) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by the OWNER, or to any future coverage, or to the OWNERS Self-insured retentions of whatever nature.
- (6) It shall be the CONTRACTOR'S responsibility to provide similar insurance for each subcontractor evidence that each subcontractor carries such insurance in like amount prior to the time such subcontractor proceeds to perform under the contract.

C. CONTRACTOR hereby waives subrogation rights for loss or damage against the OWNER and/or his AGENTS.

II. INDEMNIFICATION

A. The CONTRACTOR covenants and agrees that it will indemnify and hold harmless the CONTRACTOR, the OWNER and all of the CONTRACTORS and the OWNER'S officers, elected officials, employees and agents from any claim, loss, damage, cost, charge, or expense arising out of an act, action, neglect, omission of any kind, or claims of payments for the use of any patented material, article, device, or process used by the CONTRACTOR during the performance of the contract, whether directly or indirectly.

****sample form**

CERTIFICATE OF INSURANCE

Proper certificates of insurance should be in the Entity's files prior to the commencing of any work. For large contracts, over \$500,000, the Risk Management Department recommends that "Certified Copies of all policies" be an additional requirement. Also, on all large contracts (over \$500,000), Certificates and/or Certified Copies of Policies, should be reviewed.

Certificates should be reviewed in the following areas:

- A. Do the coverages and limits of protection conform to the requirements?
- B. Do the policy terms (period of coverage) cover the entire length of the contract?
- C. Are all interests properly shown?
- D. Is it a "claims made" or "occurrence basis" liability policy?

Certain states have approved the use of "claims made" liability policies. This form of coverage should not be accepted from contractors, unless no other alternative is available. Coverage should be on an "occurrence basis", the traditional form. If certificates are submitted, indicating that the coverage is on a "Claims Made Form," please contact the Ohio Plan for further assistance.

- E. Is the insurance carrier licensed to do business in the State?

All coverage's should be with insurance companies licensed and "admitted" to do business in the Entity's State.

An additional requirement, that coverage be with carriers "acceptable to the _____," is also recommended.

Occasionally, under special condition, coverage may be with carriers "approved but non-admitted". If the Certificates state that "This insurance has been placed with an insurer that is not licensed by the state. In case of insolvency, payment of claims may not be guarantee," contact the Ohio Plan for further assistance.

F. Does the certificate of insurance look like an "ACCORD" Certificate?

The following page shows a typical "Accord" Certificate of Insurance. This can be used as a sample of what you should expect to receive from those with whom you are doing business.

Remember, this is merely a "guide". On any complex, medium, or large sized projects, again, the Ohio Plan urges the Entity to forward the Certificates to its agent and/or Risk Manager for review and approval. If necessary, Legal Staff may be involved and make recommendations.

The key to proper Certificates is to design the contract properly in advance. If this is done, then you will avoid any conflicts in the interpretation of required coverage's, terms and conditions.

Accord Certificate of Liability Insurance

Producer:

Hargrove Insurance Agency

10321 Washington Hwy.

Glen Allen, VA 23059

Insured:

Name:

Address

Insurers Affording Coverage

Insurer A:

Insurer B:

Coverage:

Type	Policy No.	Expiration Date	Limits
General Liability	_____	_____	_____
Excess Liability	_____	_____	_____
Workers Compensation and Employers' Liability	_____	_____	_____
Motor Truck Cargo	_____		