

Requisition 25k and over

SM-P-0084-16

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS  
AND GARDI & HAUGHT, LTD. FOR PROFESSIONAL TITLE INSURANCE, REAL  
ESTATE CLOSING AND ESCROW SERVICES

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to engage in activities for the purpose of controlling and mitigating the effects of damaging flood waters, and to provide improved stormwater management (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1062, 5/5-1062.3, 5/5-15001, et seq., and ); and

WHEREAS, the COUNTY is further authorized by the above-cited statutes to enter into agreements with third parties for the purpose of carrying out the above-identified activities; and

WHEREAS, the County received Community Development Block Grant Disaster Relief (CDBG-DR) from the U.S. Department of Housing And Urban Development (HUD), which CDBG-DR funds may be used for flood hazard mitigation activities including the voluntary buyouts and acquisitions of qualifying parcels; and

WHEREAS, the COUNTY has identified parcels throughout DuPage County which qualify for buyout and acquisition under the CDBG-DR grant; and

WHEREAS, pursuant to the CDBG-DR grant conditions, and using CDBG-DR grant funds, the County may, potentially, purchase more than thirty (30) flood-prone parcels; and

WHEREAS, in order to accomplish the buyouts and acquisitions under the CDBG-DR grant, the COUNTY requires professional services: i) to insure title for real property acquired by the COUNTY using CDBG-DR grant funds; ii) to act as a real state closing agent; and iii) to maintain funds in escrow, as needed, for the COUNTY's acquisition activities; and

WHEREAS, Gardi & Haught, Ltd. ("TITLE COMPANY") has experience and expertise in these areas, is in the business of providing said professional services, and is willing to perform the required services pursuant to the attached AGREEMENT and the various terms and conditions set forth in the several additional documents which comprise the COUNTY's Request for Proposal designated RFP-16-029-GV, for a flat fee per parcel, on an as ordered basis, in a total amount not to exceed ninety thousand dollars (\$90,000.00); and

WHEREAS, the COUNTY selected the CONSULTANT in accordance with the DuPage County Procurement Ordinance, and the various State and Federal regulations pertaining to the selection of third-party vendors for Hazard Mitigation Grant Programs (HGMP) buy-outs; and

WHEREAS, the Stormwater Management Planning Committee of the DuPage County Board has reviewed and recommended approval of the attached AGREEMENT at the specified amount.

NOW, THEREFORE, BE IT RESOLVED by the DuPage County Board that the attached AGREEMENT between the COUNTY and Gardi & Haught, Ltd. is hereby accepted and approved in an amount not to exceed ninety thousand dollars (\$90,000.00), and that the Chairman of the DuPage County Board is hereby authorized and directed to execute the attached AGREEMENT on behalf of the COUNTY.

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BE IT FURTHER RESOLVED that the DuPage County Clerk be directed to transmit certified copies of this Resolution and the attached AGREEMENT to Hiten Gardi, Gardi & Haught, Ltd., 951 Plum Grove Road, Suite G, Schaumburg, Illinois 60173; State's Attorney's Office/Anthony Hayman; Community Services/Carrol Roark; Finance Director; Treasurer; Purchasing; and three (3) copies to the DuPage County Stormwater Management Department.

Enacted and approved this 8th day of March, 2016 at Wheaton, Illinois



DANIEL J. CRONIN, CHAIRMAN  
DU PAGE COUNTY BOARD



Attest:

PAUL HINDS, COUNTY CLERK

**AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS  
AND GARDI & HAUGHT, LTD. FOR PROFESSIONAL TITLE INSURANCE, REAL  
ESTATE CLOSING AND ESCROW SERVICES**

This Professional Service Agreement ("AGREEMENT"), is made this 8<sup>th</sup> day of March, 2016 between COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and Gardi & Haught, Ltd., an Illinois corporation, licensed to do business in the State of Illinois, with offices at 951 N. Plum Grove Road, Suite G, Schaumburg, Illinois (hereinafter referred to as the TITLE COMPANY). The COUNTY and the TITLE COMPANY are hereafter sometimes individually referred to as a "party" or together as the "parties."

**RECITALS**

**WHEREAS**, the Illinois General Assembly has granted the COUNTY authority to engage in activities for the purpose of controlling and mitigating the effects of damaging flood waters, and to provide improved stormwater management (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1062, 5/5-1062.3, 5/5-15001, et seq., and ); and

**WHEREAS**, the COUNTY is further authorized by the above-cited statutes to enter into agreements with third parties for the purpose of carrying out the above-identified activities; and

**WHEREAS**, the County received Community Development Block Grant Disaster Relief (CDBG-DR) from the U.S. Department of Housing And Urban Development (HUD), which CDBG-DR funds may be used for flood hazard mitigation activities including the voluntary buyouts and acquisitions of qualifying parcels; and

**WHEREAS**, the COUNTY has identified parcels throughout DuPage County which qualify for buyout and acquisition under the CDBG-DR grant; and

**WHEREAS**, pursuant to the CDBG-DR grant conditions, and using CDBG-DR grant funds, the County may, potentially, purchase more than thirty (30) flood-prone parcels; and

**WHEREAS**, in order to accomplish the buyouts and acquisitions under the CDBG-DR grant, the COUNTY requires professional services: i) to insure title for real property acquired by the COUNTY using CDBG-DR grant funds; ii) to act as a real state closing agent; and iii) to maintain funds in escrow, as needed, for the COUNTY's acquisition activities; and

**WHEREAS**, the TITLE COMPANY has experience and expertise in these areas, is in the business of providing such professional services, and is willing to perform the required services pursuant to this AGREEMENT and the various terms and assignments set forth in the several additional documents which comprise the COUNTY's Request for Proposal designated RFP-16-029-GV, for an amount not to exceed ninety thousand dollars (\$90,000.00); and

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

## **1.0 INCORPORATION AND CONSTRUCTION.**

- 1.1 All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.
- 1.3 The various documents that comprise DuPage County's Request for Proposal RFP-16-029-GV ("RFP") shall be deemed incorporated herein and a part thereof together with the terms and conditions of IEMA HGMP Assistance Agreement FEMA-DR-4116-IL, which are incorporated herein by reference and the terms of which the TITLE COMPANY agrees to comply with.

## **2.0 SCOPE OF SERVICES.**

- 2.1 Services are to be provided by the TITLE COMPANY according to the specifications set forth in the RFP.
- 2.2 The COUNTY may, from time to time, request changes in the Services. Any such change shall be documented by an amendment to this AGREEMENT, in accordance with Section 9.0 of this AGREEMENT, or other such written Change Order allowed pursuant to the DuPage County Procurement Ordinance and Purchasing Guidelines.
- 2.3 The relationship of TITLE COMPANY to COUNTY is that of independent contractor, and nothing in this AGREEMENT is intended nor shall be construed to create an agency, employment, joint venture relationship, or any other relationship allowing COUNTY to exercise control or direction over the manner or method by which TITLE COMPANY provides services.

## **3.0 TIME FOR PERFORMANCE.**

- 3.1 The TITLE COMPANY shall promptly commence work upon receipt of a request for services from the COUNTY.

## **4.0 DELIVERABLES.**

- 4.1 The TITLE COMPANY shall promptly provide the COUNTY with a commitment for issuance of title insurance.
- 4.2 Following each closing, the TITLE COMPANY shall provide the COUNTY with copies of all closing documents signed or exchanged at said closing, including but not limited to deeds, releases, bills of sale, escrow instructions, real estate tax disclosures, closing statements, ALTA statements and GAP/seller indemnification agreements. Following each closing, the TITLE COMPANY shall further provide the COUNTY with Recorder-stamped deeds and releases (and similar instruments), together with a written policy for title insurance.

## **5.0 COMPENSATION.**

- 5.1 The COUNTY shall pay the TITLE COMPANY for services rendered, on an as ordered basis, and shall only pay in accordance with the provisions of the RFP and this AGREEMENT. The COUNTY shall not be obligated to pay for any services not in compliance with the RFP and this AGREEMENT. Invoices shall be issued for work relating to a specific parcel.
- 5.2 For work performed, as ordered by the COUNTY, the COUNTY shall pay TITLE COMPANY in accordance with the flat fee (collectively the "fee") set forth in its Pricing guide included with the RFP and attached hereto as Exhibit A. The TITLE COMPANY shall not invoice the COUNTY, and the COUNTY shall not be obligated to pay the TITLE COMPANY any invoiced amount, until after the TITLE COMPANY has satisfactorily completed all of the work specified for such fee, including issuance of title insurance, completion of a real estate closing, recordation of such deeds and, or, releases as necessary and delivery of copies of all pertinent closing documents.
- 5.3 Total payments to the TITLE COMPANY under the terms of this AGREEMENT shall not under any circumstances exceed ninety thousand dollars (\$90,000.00). This amount is a "not to exceed" amount. In the event the COUNTY directs TITLE COMPANY to do work which would cause the stated amount to be exceeded, the TITLE COMPANY shall not be responsible for such work until this AGREEMENT is modified pursuant to Section 9.0 below.
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- 5.4 The TITLE COMPANY shall submit its invoices for services rendered for cancelled or terminated COUNTY acquisitions no later than sixty (60) days following the COUNTY's notice of said cancellation or termination.
- 5.5 TITLE COMPANY's invoices shall each summarize, as applicable, the tasks performed, and shall itemize each charge. The TITLE COMPANY shall provide the COUNTY with a valid taxpayer identification number prior to making any request for compensation.
- 5.6 Upon receipt, review and approval of properly documented invoices, the COUNTY shall pay, or cause to be paid, to the TITLE COMPANY the amounts invoiced, provided that the amount invoiced together with the amounts of previous partial payments do not exceed the fee specified in its RFP submittal. The COUNTY may not deny a properly documented claim for compensation, in whole or in part, without cause.

## **6.0 SATISFACTORY PERFORMANCE.**

- 6.1 The COUNTY is engaging this TITLE COMPANY because the TITLE COMPANY professes to the COUNTY that it will employ the standard of care within its profession in the performance of the services herein contracted. Accordingly the TITLE COMPANY's standard of performance under the terms of this AGREEMENT shall meet the quality and standards commonly provided by similar professional firms practicing in DuPage County, Illinois.

- 6.2 Acceptance of the work shall not relieve the TITLE COMPANY of the responsibility for the quality of its work, nor its liability for loss or damage resulting from any errors, omissions, or negligent or willful acts by the TITLE COMPANY.

**7.0 BREACH OF CONTRACT.**

- 7.1 In the event of any breach of contract, the non-breaching party shall give notice to the breaching party stating with particularity the nature of the alleged breach. The breaching party shall be allowed a reasonable opportunity to cure the breach. Whenever a Party hereto has failed to timely cure a breach of this AGREEMENT, the other Party may terminate this AGREEMENT by giving ten (10) days written notice thereof to the breaching party. Notwithstanding the above term, the TITLE COMPANY'S failure to maintain an AM Best rating of A or better, or the occurrence of any of the other contingencies described in Paragraph 10.4, below, shall be grounds for the COUNTY'S immediate termination of this AGREEMENT.

**8.0 COMPLIANCE WITH THE LAW AND OTHER AUTHORITY.**

- 8.1 The TITLE COMPANY shall comply with Federal, State and Local statutes, ordinances and regulations.
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- 8.2 The TITLE COMPANY shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, sexual orientation, age, handicap, or national origin, or otherwise commit an unfair employment practice. TITLE COMPANY shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/-101, et seq., and with all rules and regulations established by the Department of Human Rights.
- 8.3 The TITLE COMPANY, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois Procurement Code, 30 ILCS 500/1-1, et seq.; and further certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (Illinois Compiled Statutes, Chapter 720, paragraph 5/33E-3).
- 8.4 The TITLE COMPANY, by its signature on this AGREEMENT, certifies that no payment, gratuity or offer of employment, except as permitted by the Illinois State Gift Ban Act and the County of DuPage Ethics Ordinance, was made by or to the TITLE COMPANY, or TITLE COMPANY'S personnel, in relation to this AGREEMENT. The TITLE COMPANY has (or will) also executed the attached Ethics Disclosure Statement that is made a part hereof and agrees to update contribution information on an ongoing basis during the life of the AGREEMENT as required by said Ordinance. The TITLE COMPANY, by its signature on this AGREEMENT, further certifies that no federal appropriated funds have been or will be paid by or on behalf of the TITLE COMPANY to any person to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress regarding the award of federal

assistance, or the extension continuation, renewal, amendment, or federal assistance, or the extension, continuation, renewal, amendment, or modification of any federal assistance agreement. If any funds other than federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for federal assistance, the TITLE COMPANY shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352, to the appropriate Federal agency.

- 8.5 The TITLE COMPANY covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of TITLE COMPANY'S services under this AGREEMENT.

#### **9.0 MODIFICATION OR AMENDMENT.**

- 9.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties.

- 9.2 The TITLE COMPANY acknowledges that it has reviewed the DuPage County Procurement Ordinance, which is hereby incorporated into this AGREEMENT, and has had an opportunity to review it. TITLE COMPANY agrees to submit changes to the Scope of Work or compensation in accordance with said Ordinance.

#### **10.0 TERM OF THIS AGREEMENT.**

- 10.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following: a) the early termination of this AGREEMENT, by either Party, in accordance with Section 7.0 above, or Paragraph 10.4, below; or b) the COUNTY'S completion of property acquisitions under the CDBG-DR; or c) the termination, cancellation or suspension of the COUNTY'S CDGB-DR funding; or d) December 31, 2018.
- 10.2 The TITLE COMPANY shall not perform any work under this AGREEMENT after the expiration date set forth above, or after the early termination of this AGREEMENT, or during a provisional extension period. The COUNTY is not liable and will not pay the TITLE COMPANY for any work performed after the AGREEMENT'S expiration or termination. However, nothing herein shall be construed so as to relieve the COUNTY of its obligation to pay the TITLE COMPANY for work satisfactorily performed prior to the AGREEMENT'S termination, or expiration.

- 10.3 The term for performing this AGREEMENT may be amended by a Change Order, or other COUNTY designated form, signed by both parties without formal amendment pursuant to Section 9.0, above.
- 10.4 Except as otherwise set forth in this AGREEMENT, either party shall have the right to terminate this AGREEMENT for any cause or without cause thirty (30) days after having served written notice upon the other party, except in the event of TITLE COMPANY's failure to maintain suitable insurance at the requisite coverage amounts, insolvency, bankruptcy or receivership, or if the TITLE COMPANY is barred from contracting with any unit of government, or is subsequently convicted or charged with a violation of any of the statutes or ordinances identified in Section 8.0, above, in which case termination shall be effective immediately upon receipt of notice from the COUNTY, at the COUNTY's election.

#### **11.0 MISCELLANEOUS.**

- 11.1 Either party may assign this AGREEMENT provided, however, the other party shall first approve such assignment, in writing.
- 11.2 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
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- 11.3 In the event of the contingency described in Paragraph 11.2, above, the parties shall make a good faith effort to amend this AGREEMENT in order to remedy and, or, replace any provision declared unenforceable or invalid.
- 11.4 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 11.5 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.
- 11.6 Any required notice shall be sent to the following addresses and parties:
- Gardi & Haught, Ltd.  
951 N. Plum Grove Road, Suite G  
Schaumburg, Illinois 60173  
ATTN: Hiten Gardi, Esq.
- DuPage County Department of Stormwater Management.  
421 N. County Farm Road  
Wheaton, Illinois 60187  
ATTN: Director of Stormwater Management
- 11.7 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (8:00

a.m.-4:30 p.m. CST or CDT Monday-Friday); (b) served by facsimile transmission during regular business hours (8:00 a.m.-4:30 p.m. CST or CDT Monday-Friday); or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 9.1, above.

- 11.8 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.
- 11.9 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUPAGE

GARDI & HAUGHT, LTD.

[Redacted signature area]

[Redacted signature area]

BY

DANIEL CRONIN, CHAIRMAN  
DUPAGE COUNTY BOARD

[name and title]

ATTEST BY:

[Redacted signature area]

PAUL HINDS, COUNTY CLERK

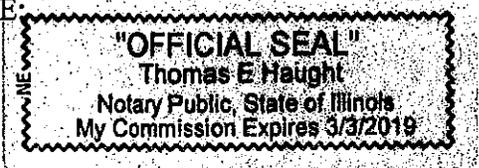
ATTEST BY:

[Redacted signature area]

2/03/16

NAME:

TITLE:



**PRICING**

**The cost to DuPage County per transaction, regardless of purchase price, is \$2,800, which includes the following items:**

1. Closing Fee
2. Title insurance for Owner's Policy
3. Title update
4. Closing Protection Letter
5. New York Style Closing Fee
6. Title Exam
7. Title Search
8. Commitment Update
9. Document Recording
10. Preparation of Settlement Statement

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11. Disbursements
12. Wire Fee
13. Illinois Title Policy Registration Fee
14. Title Company Representative to Personally Facilitate Closing
15. Issue Title Policy

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**Total - \$2,800.00**