

Resolution No. 2225

Resolution of the Village of Villa Park, DuPage County, Illinois, Approving an Engineering Services Agreement with CDM Smith, Inc., of Chicago, Illinois for the Grade Separation Feasibility Study in an Amount Not to Exceed \$97,624.00.

WHEREAS, the Village of Villa Park (the "Village") is a duly organized and validly existing non-home rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and

WHEREAS, the Village staff has recommended a proposed design engineering services agreement with CDM Smith, Inc., of Chicago, Illinois, to perform a grade separation feasibility study in an amount not to exceed Ninety-Seven Thousand Six Hundred Twenty-Four and 00/100 (\$97,624.00); and

WHEREAS, the corporate authorities of the Village of Villa Park have determined that it is in the best interests of the citizens of the Village of Villa Park to enter into an agreement with CDM Smith, Inc., of Chicago, Illinois, as is more particularly set forth in the *Agreement Between The Village of Villa Park, Illinois and CDM Smith, Inc. for the furnishing of Professional Civil Engineering Services for Grade Separation Study*, a copy of which is attached hereto as Exhibit A and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Villa Park, DuPage County, State of Illinois, as follows:

Section 1: The facts and statements contained in the preamble clauses to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

Section 2: That *Agreement Between The Village of Villa Park, Illinois and CDM Smith, of Chicago, Illinois for the Grade Separation Feasibility Study*, attached as Exhibit A, be and the same is hereby approved, and the Village President is hereby authorized and directed to execute same on behalf of the Village of Villa Park, with such changes therein as may be

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approved by the Village President and Village Attorney, the execution thereof to constitute conclusive evidence of the approval of such changes, if any.

Section 3: That this Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this 19th day of December 2022, pursuant to a roll call vote as follows:

AYES: 7
NAYS: 0
ABSENT: 0

APPROVED this 19th day of December 2022



Village President

Attest: 

Village Clerk



AGREEMENT
between
THE VILLAGE OF VILLA PARK, ILLINOIS
and
CDM SMITH INC.,
for the furnishing of
PROFESSIONAL CIVIL ENGINEERING SERVICES
for the
VILLA PARK GRADE SEPARATION FEASIBILITY STUDY

THIS AGREEMENT made and entered into by and between the VILLAGE OF VILLA PARK, ILLINOIS, hereinafter referred to as the "VILLAGE," and CDM SMITH, INC., hereinafter referred to as the "ENGINEER," has been prepared and executed to provide for professional civil engineering services for the VILLAGE OF VILLA PARK – GRADE SEPERATION FEASIBILITY STUDY, hereinafter referred to as the "PROJECT".

This agreement is hereinafter referred to as the "AGREEMENT". The work associated with this AGREEMENT is as described below as Engineering Services.

In consideration of these premises and of the mutual covenants herein set forth,

A. THE ENGINEER AGREES:

1. The ENGINEER shall serve as the VILLAGE'S professional civil engineering consultant in those phases of the PROJECT to which this AGREEMENT applies. The ENGINEER shall perform the Engineering Services described in its proposal dated October 2022, entitled "Proposal Villa Park Grade Separation Feasibility Study", attached hereto as Exhibit A and made a part hereof.

2. Additional services beyond the scope of the Engineering Services above-described, requested in writing by the VILLAGE, shall be performed by the ENGINEER in accordance with the hourly rate as agreed upon in writing between the VILLAGE and ENGINEER, and approved by the VILLAGE Board of Trustees.

3. The ENGINEER will perform services under this AGREEMENT in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the Chicagoland area. Notwithstanding anything to the contrary which may be contained in this AGREEMENT or any other material incorporated herein by reference, or in any agreement between the Village and any other party concerning the PROJECT, the ENGINEER shall not have control or be in charge of, and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or

programs of the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the PROJECT. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the ENGINEER.

4. The ENGINEER shall procure and maintain for the duration of its AGREEMENT, and for three years thereafter, insurance against errors and omissions and claims for injuries to its employees which may arise from, or are in conjunction with, the performance of the work hereunder by the ENGINEER, its agents, representatives, employees, or subcontractors.

a. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability occurrence form CG 0001 (Ed. 11/85);
- (2) Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile Liability, symbol 01 "any auto" and endorsement CA 0029 (Ed. 12/88) changes in Business Auto and Truckers coverage forms - Insured Contract or ISO form number CA 0001 (Ed. 12/90);
- (3) Professional Liability/Malpractice Liability policy; and
- (4) Worker's Compensation as required by the Labor Code of the State of Illinois and Employers' Liability insurance.

b. Minimum Limits of Insurance

The ENGINEER shall maintain limits no less than:

- (1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be \$2,000,000 per project.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident or bodily injury and property damage.
- (3) Professional Liability: \$2,000,000 single limit for errors and omissions, professional/malpractice liability.
- (4) Workers' Compensation and Employers' Liability: Workers' Compensation insurance within statutory limits, and Employers' Liability limits of \$500,000 per accident.

- (5) Umbrella Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Minimum Aggregate shall be no less than \$2,000,000 per person, per aggregate.

c. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the VILLAGE. At the option of the VILLAGE, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the VILLAGE, its officials, employees and volunteers; or the ENGINEER shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

d. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

(1) General Liability and Automobile Liability Coverages

- (a) The VILLAGE, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the ENGINEER; or automobiles owned, leased, hired or borrowed by the ENGINEER. The coverage shall contain no special limitations on the scope of protection afforded to the VILLAGE, its officials, employees, and volunteers.
- (b) The ENGINEER's insurance coverage shall be primary as respects the additional insureds. Any insurance or self-insurance maintained by the VILLAGE, its officials, agents, employees, and volunteers shall be in excess of the ENGINEER's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the VILLAGE, its officials, agents, employees, and volunteers.
- (d) The ENGINEER's insurance shall contain a severability of interests' clause or language stating

that the ENGINEER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) All Coverages

Each insurance policy required by this clause shall be endorsed to state that the coverage shall not be voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the VILLAGE.

e. Acceptability of Insurers

The insurance carrier used by the ENGINEER shall have a minimum insurance rating of A+ according to the AM Best Insurance Rating Schedule and licensed to do business in the State of Illinois.

f. Verification of Coverage

The ENGINEER shall furnish the VILLAGE with certificates of insurance and with copies of endorsements affecting coverage. The certificates and endorsement for the insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the insurance carrier and are to be received and approved by the VILLAGE before any work commences. The VILLAGE reserves the right to request full certified copies of the insurance policies.

5. To the fullest extent permitted by law, the ENGINEER shall indemnify and hold harmless the VILLAGE, its officials, employees and volunteers against injuries, deaths, loss, damages, claims, suits, liabilities, judgments, cost and expenses, which may in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay reasonable charges of attorneys and reasonable costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same. Nothing contained herein shall be construed as prohibiting the VILLAGE, its officials, employees and volunteers from defending, through the selection and use of their own agents, attorneys and experts, any injuries,

deaths, loss, damages, claims, suits, liabilities, and judgments brought against them. The VILLAGE'S participation in its defense shall not remove the ENGINEER'S duty to indemnify, defend and hold harmless the VILLAGE as set forth herein.

6. Any insurance policies required by this AGREEMENT, or otherwise provided by the ENGINEER, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the VILLAGE, its officials, agents, employees and volunteers and herein provided.

7. The ENGINEER represents and warrants to the VILLAGE that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The ENGINEER further represents and warrants to the VILLAGE that the ENGINEER and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The ENGINEER hereby agrees to defend, indemnify and hold harmless the VILLAGE, the corporate authorities, and all VILLAGE elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from and related to any breach of the foregoing representations and warranties.

8. The ENGINEER will comply with all applicable federal and Illinois statutes, and local ordinances of the VILLAGE and shall operate within and uphold the ordinances, rules and regulations of the VILLAGE while engaged in services herein described.

9. The VILLAGE reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and the ENGINEER and VILLAGE shall negotiate appropriate adjustments acceptable to both parties to accommodate such changes.

10. The VILLAGE may, at any time, by written order to the ENGINEER (Suspension of Services Order) require the ENGINEER to stop all, or any part, of the services required by this AGREEMENT. Upon receipt of such an order, the ENGINEER shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. The VILLAGE, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. The ENGINEER will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

11. This AGREEMENT may be terminated by the VILLAGE, upon seven (7) days' written notice to the ENGINEER, at its last known post office address. Provided that, should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed. All field notes, test records, drawings, and reports completed or partially completed at the time of termination shall become the property of, and made available to, the VILLAGE. Within five (5) business days after notification and request, the ENGINEER shall deliver to the successor VILLAGE Engineer all property, books and effects of every description in its possession belonging to the VILLAGE and pertaining to the office of VILLAGE Engineer.

12. This AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, upon the occurrence of any one or more of the following events, without cause and without prejudice to any other right or remedy:

- a.** If the ENGINEER commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereinafter in effect, or if the ENGINEER takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;
- b.** If a petition is filed against the ENGINEER under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the ENGINEER under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
- c.** If the ENGINEER makes a general assignment for the benefit of creditors;
- d.** If a trustee, receiver, custodian or agent of the ENGINEER is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the ENGINEER is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the ENGINEER's creditors;
- e.** If the ENGINEER admits in writing an inability to pay its debts generally as they become due.

13. Upon termination, the ENGINEER shall deliver to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the VILLAGE. In such case, the ENGINEER shall be paid for all services and any expense sustained, less all costs incurred by the VILLAGE, to have the services performed which were to have been performed by the ENGINEER.

14. The ENGINEER is qualified technically and is conversant with the policies applicable to the performance of design engineering and that sufficient, properly trained, and experienced personnel will be retained to perform the services enumerated herein.

15 The ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.

16 The ENGINEER warrants that he has not employed or retained any company or person, other than an employee working solely for the ENGINEER, to secure this AGREEMENT, and that he has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the VILLAGE shall have the right to annul this AGREEMENT without liability, or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

17. This AGREEMENT shall be deemed to be exclusive between the VILLAGE and the ENGINEER. This AGREEMENT shall not be assigned by the ENGINEER without first obtaining permission in writing from the VILLAGE.

18. All books, papers, notes, records, lists, data, files, forms, reports, accounts, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, magnetic media, electronic files, printouts, backups, and computer databases created or modified by the ENGINEER relating in any manner to the work performed by the ENGINEER or by anyone else and used by the ENGINEER in performance of this services under this AGREEMENT (the "Work") shall be a "work made for hire" as defined by the laws of the United States regarding copyrights.

19. The ENGINEER hereby assigns to the VILLAGE and its successors and assigns all of its right, title, interest and ownership in the Work, including, but not limited to, copyrights, trademarks, patents, and trade secret rights and the rights to secure any renewals, reissues, and extensions thereof. The ENGINEER grants permission to the VILLAGE to register the copyright and other rights in the Work in the VILLAGE'S name. The ENGINEER shall give the VILLAGE, or any other person designated by the VILLAGE all assistance reasonably necessary to perfect its rights under this AGREEMENT and to sign such applications, documents, assignment forms and other papers as the VILLAGE requests from time to time to further confirm this assignment. The ENGINEER further grants to the VILLAGE full, complete and exclusive ownership of the Work. The ENGINEER shall not use the Work for the benefit of anyone other than the VILLAGE, without the VILLAGE'S prior written permission. Upon completion of the Work or other termination of this AGREEMENT the ENGINEER shall deliver to

the VILLAGE all copies of any and all materials relating or pertaining to this AGREEMENT.

20. The drawings, specifications, reports, and any other PROJECT documents prepared by the ENGINEER in connection with any or all of the services furnished hereunder shall be delivered to the VILLAGE for the use of the VILLAGE. The ENGINEER shall have the right to retain originals of all PROJECT documents and drawings for its files. Furthermore, it is understood and agreed that the PROJECT documents such as, but not limited to, reports, calculations, drawings, and specifications prepared for the PROJECT, whether in hard copy or machine-readable form, are instruments of professional service intended for one-time use. The VILLAGE may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the PROJECT. Any reuse of PROJECT documents, without the express written consent of the ENGINEER, shall be at VILLAGE'S sole risk; and the VILLAGE shall indemnify and hold harmless the ENGINEER from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. The ENGINEER shall have the right to include representations of the design of the PROJECT, including photographs of the exterior and interior, among the ENGINEER'S promotional and professional materials. The ENGINEER's materials shall not include the VILLAGE'S confidential and proprietary information.

21. The ENGINEER will not at any time, either directly or indirectly, disclose, use or communicate or attempt to disclose, use or communicate to any person, firm, or corporation any confidential information or any other information concerning the business, services, finances or operations of the VILLAGE except as expressly authorized by the VILLAGE. The ENGINEER shall treat such information at all times as confidential. The ENGINEER acknowledges that each of the following can contain confidential information of the VILLAGE and that the disclosure of any of the following by the ENGINEER without the VILLAGE'S express authorization would be harmful and damaging to the VILLAGE'S interests:

- a. Compilations of resident names and addresses, resident lists, resident payment histories, resident information reports, any other resident information, computer programs, computer software, printouts, backups, computer disks and diskettes, and computer databases and which are not otherwise known to the public.
- b. All information relating to the Engineering Services being performed by the ENGINEER under this AGREEMENT, regardless of its type or form and which are not otherwise known to the public.
- c. Ideas, concepts, designs and plans which are specifically involved with the Engineering Services being performed by the ENGINEER under this AGREEMENT which are created, designed, enhanced by the ENGINEER and which are not otherwise known to the public.

d. Financial information and police records.

This itemization of confidential information is not exclusive; there may be other information that is included within this covenant of confidentiality. This information is confidential whether or not it is expressed on paper, disk, diskette, magnetic media, optical media, monitor, screen, or any other medium or form of expression. The phrase "directly or indirectly" includes, but is not limited to, acting through ENGINEER'S wife, children, parents, brothers, sisters, or any other relatives, friends, partners, trustees, agents or associates.

22. All books, papers, records, lists, files, forms, reports, accounts, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, printouts, backups, and computer databases relating in any manner to the VILLAGE'S business, services, programs, software or residents, whether prepared by the ENGINEER or anyone else, are the exclusive property of the VILLAGE. In addition, all papers, notes, data, reference material, documentation, programs, diskettes (demonstration or otherwise), magnetic media, optical media, printouts, backups, and all other media and forms of expression that in any way include, incorporate or reflect any confidential information of the VILLAGE (as defined above) are the exclusive property of the VILLAGE. The ENGINEER shall immediately return said items to the VILLAGE upon termination of the ENGINEER's engagement or earlier at the VILLAGE'S request at any time.

23. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including, but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.

24. The ENGINEER will comply with all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.

B. THE VILLAGE AGREES:

1. The VILLAGE shall pay the ENGINEER, for the Engineering Services above described, a fee not to exceed Ninety-Seven Thousand Six Hundred Twenty four (\$97,624.00) Dollars.

2. For all direct expenses totaling more than Twenty-Five Dollars (\$25.00), the ENGINEER shall provide copies of receipts from suppliers of expendable materials. Invoices for reimbursable expenses shall be provided no later than sixty (60) days after

the expense is incurred by the ENGINEER, and if such invoices are not provided within sixty (60) days, the VILLAGE shall not be required to pay such reimbursable expenses.

3. The ENGINEER shall indicate to the VILLAGE the information needed for rendering of the services of this AGREEMENT. The VILLAGE shall provide to the ENGINEER such information as is available to the VILLAGE and the VILLAGE'S consultants and contractors, and the ENGINEER shall be entitled to rely upon the accuracy and completeness thereof.

4. **Payment of ENGINEER'S Fee.** The VILLAGE, for and in consideration of the rendering of the Engineering Services enumerated herein shall pay to the ENGINEER for rendering such services the fee hereinbefore established in the following manner:

- a. Upon receipt of monthly statements from the ENGINEER and the approval thereof by the VILLAGE, payments for the work performed shall be due and payable to the ENGINEER within thirty (30) days after approval by the VILLAGE.
- b. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*).

5. This AGREEMENT may be terminated by the ENGINEER, upon thirty (30) days' written notice to the VILLAGE should the VILLAGE fail substantially to perform in accordance with the terms of this AGREEMENT through no fault of the ENGINEER. Upon such termination, the ENGINEER shall make available to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the VILLAGE. The ENGINEER shall be paid promptly for all services provided to the date of termination.

C. IT IS MUTUALLY AGREED:

1. The ENGINEER is an independent contractor in the performance of this AGREEMENT, and it is understood that the parties have not entered into any joint venture or partnership with the other. The ENGINEER shall not be considered to be the agent of the VILLAGE. Nothing contained in this AGREEMENT shall create a contractual relationship with a cause of action in favor of a third party against either the VILLAGE or ENGINEER.

2. Each party to this AGREEMENT shall designate one or more persons to act with authority on its behalf with respect to appropriate aspects of the PROJECT. The persons designated shall review and respond promptly to all communications received from the other party.

3. Written notices between the VILLAGE and the ENGINEER shall be deemed sufficiently given after being placed in the United States mail, registered or certified, postage pre-paid, addressed to the appropriate party as follows:

a. If to the VILLAGE:

VILLAGE OF VILLA PARK
20 S. Ardmore Avenue
Villa Park, Illinois 60181
Attn: Village Manager

b. If to the ENGINEER:

CDM SMITH, INC.
125 S. Wacker Drive
Suite 700
Chicago, IL 60606

c. Either party may change its mailing address by giving written notice to the other party as provided above. Whenever this AGREEMENT requires one party to give the other notice, such notice shall be given only in the form and to the addresses described in this paragraph.

4. This AGREEMENT represents the entire and integrated contract between the parties and supersedes all prior negotiations, representations or understandings, whether written or oral. This AGREEMENT may only be amended by written instrument executed by authorized signatories of the VILLAGE and the ENGINEER.

5. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.

6. The waiver of one party of any breach of this AGREEMENT or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this AGREEMENT and shall not be construed to be a waiver of any provision, except for the particular instance.

7. If any term, covenant, or condition of this AGREEMENT or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this contract shall not be affected thereby; and each term, covenant or condition of this AGREEMENT shall be valid and shall be enforced to the fullest extent permitted by law.

8. This AGREEMENT shall be construed under and governed by the laws of the State of Illinois, and all actions brought to enforce the dispute resolution provisions of this AGREEMENT shall be so brought in the Circuit Court of DuPage County, State of Illinois.

9. This AGREEMENT may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10. This AGREEMENT shall become effective only after an appropriation therefor has been made. The term of this AGREEMENT shall be for one year following the effective date of the appropriation.

D. CERTIFICATION OF ENGINEER

1. The ENGINEER certifies that the ENGINEER, its shareholders holding more than five percent (5%) of the outstanding shares of the ENGINEER, its officers and directors are:

- a. not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
- b. not barred from contracting as a result of a violation of either Section 33E-3 (bid rigging) or Section 33E-4 (bid rotating) of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 5/33E-4);
- c. not in default, as defined in 5 ILCS 385/2, on an educational loan, as defined in 5 ILCS 385/1;
- d. in compliance with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*);
- e. in compliance with equal employment opportunities and that during the performance of the AGREEMENT, the ENGINEER shall:
 - (1) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

- (2) If it hires additional employees in order to perform this AGREEMENT or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit, and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- (3) In all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- (4) Send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the ENGINEER's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the ENGINEER in its efforts to comply with such Act and Rules and Regulations, the ENGINEER will promptly so notify the Illinois Department of Human Rights; and the VILLAGE and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- (5) Submit reports as required by the Illinois Department of Human Rights, Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- (6) Permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- (7) Not maintain or provide for its employees any segregated facilities at any of its establishments, and not permit its

employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this section, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise.

- (8) ENGINEER (except where it has obtained identical certifications from proposed Subcontractors and material suppliers for specific time periods), obtain certifications in compliance with this subparagraph from proposed subcontractors or material suppliers prior to the award of a subcontract or the consummation of material supply agreements, exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that ENGINEER will retain such certifications in its files.
 - (9) In the event of the ENGINEER's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Act or the Rules and Regulations of the Department, the ENGINEER may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
- f. in compliance with 775 ILCS 5/2-105(A)(4) by having in place and enforcing a written sexual harassment policy.
 - g. in agreement that in the event of non-compliance with the provisions of this certification relating to equal employment opportunity, the Illinois Human Rights Act or the Illinois Department of Human Rights, Rules and Regulations, the ENGINEER may be declared ineligible for future contracts with the VILLAGE, and this AGREEMENT may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
 - h. in compliance with 30 ILCS 580/1 *et seq.* (Drug Free Workplace Act) by providing a drug-free workplace by:

- (1)** Publishing a statement:
 - (a)** Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the ENGINEER's workplace.
 - (b)** Specifying the actions that will be taken against employees for violations of such prohibition.
 - (c)** Notifying the employee that, as a condition of employment on such AGREEMENT, the employee will:
 - (i)** abide by the terms of the statement; and
 - (ii)** notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (2)** Establishing a drug-free awareness program to inform employees about:
 - (a)** the dangers of drug abuse in the workplace;
 - (b)** the ENGINEER's policy of maintaining a drug-free workplace;
 - (c)** any available drug counseling, rehabilitation, and employee assistance program; and
 - (d)** the penalties that may be imposed upon employees for drug violations.
- (3)** Making it a requirement to give a copy of the statement required by subparagraph D.1.h.(1) to each employee engaged in the performance of the AGREEMENT, and to post the statement in a prominent place in the workplace.
- (4)** Notifying the VILLAGE within ten (10) days after receiving notice under Subparagraph D.1.h.(1)(c)(ii) from any employee or otherwise receiving actual notice of such conviction.

- (5) Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by 30 ILCS 580/5.
 - (6) Assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicating that a trained referral team is in place.
 - (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.
- i in compliance with the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1, *et seq.*), is a party to a collective bargaining agreement dealing with the subject matter of the Substance Abuse Prevention on Public Works Projects Act, or has in place and is enforcing a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act.
 - j. not a VILLAGE official, spouse or dependent child of a VILLAGE official, agent on behalf of any VILLAGE official or trust in which a VILLAGE official, the spouse or dependent child of a VILLAGE official.
 - k. not having solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the ENGINEER.
 - l. not having given to any officer or employee of the VILLAGE any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer.
 - m. the ENGINEER acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to work performed under this AGREEMENT are considered a public record of the VILLAGE; and therefore, the ENGINEER shall review its records and promptly produce to the VILLAGE any

records in the ENGINEER'S possession which the VILLAGE requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the ENGINEER shall produce to the VILLAGE such records within three (3) business days of a request for such records from the VILLAGE at no additional cost to the VILLAGE.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed, by their duly authorized officers as of the dates below indicated.

Executed by the VILLAGE, this 19th day of December, 2022.



ATTEST:

By [Signature]
Village Clerk

VILLAGE OF VILLA PARK
20 S. Ardmore Avenue
Villa Park, Illinois 60181

By [Signature]
Nick Cuzzone, Village President

Executed by the ENGINEER, this 19th day of December, 2022.

CDM SMITH, INC.
125 S. Wacker Drive
Suite 700
Chicago, Illinois 60606

By [Signature]
Steve S. Pasinski, Associate

EXHIBIT A

“Proposal Villa Park Grade Separation Feasibility Study dated October 2022”