

PROFESSIONAL SERVICES AGREEMENT

Summit Avenue Resurfacing Project (“Project”)

This Agreement is by and between

The Village of Villa Park (“Client”)
20 S. Ardmore Avenue
Villa Park, IL 60181

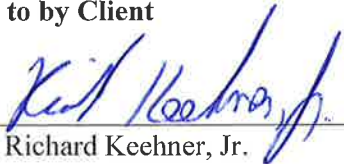
and

Clark Dietz, Inc. (“Clark Dietz”)
977 N. Oaklawn Avenue, Suite 106
Elmhurst IL 60126

Who agree as follows:

Client hereby engages Clark Dietz to perform the services set forth in Part I - Services and Clark Dietz agrees to perform the Services for the compensation set forth in Part III - Compensation. Clark Dietz shall be authorized to commence the Services upon execution of this Agreement and written or verbal authorization to proceed from Client. Client and Clark Dietz agree that this signature page, together with Parts I - V and attachments referred to therein, constitute the entire Agreement between them relating to the Project.


Agreed to by Client

By: 
Richard Keehner, Jr.

Title: Village Manager

Date: 1-25-16

Agreed to by Clark Dietz

By: 
Mustafa Emir, PhD, P.E.

Title: Vice President

Date: 1.14.2015

**PART I
SERVICES BY CLARK DIETZ**

A. Project Description

This project shall include completing Phase I services and a Phase II Engineering Design of the Summit Avenue Resurfacing Project as required by the Illinois Department of Transportation (IDOT). The Phase II design is required for the use of STP funding for the construction of this project. The project extends from East Madison Street to East Roosevelt Road.

The Phase II design will conform with the Preliminary Design approved as part of the IDOT Phase I approval. The design will include provisions for roadway improvements, as well as the replacement of sidewalk crossings to meet current ADA standards.

It is not anticipated that this project will require the acquisition of right-of-way to accommodate the improvements.

B. Scope

1. Survey
 - a. Provide detailed survey in GIS format within project limits to verify existing conditions surrounding ADA crossings.
 - b. Clark Dietz recommends hiring a sub-consultant to prepare a geotechnical report to be used for pavement design.
2. Environmental Coordination and Analysis
 - a. Perform a Special Waste Assessment (SWA) for the proposed improvement limits
 - b. Prepare and submit the Environmental Survey Request (ESR) form and attachments to IDOT.
3. Preliminary Design Phase
 - a. Perform a pavement design for the proposed roadway per IDOT BLR guidelines. The pavement design will include a typical section for the entire length of the project based on the geotechnical report.
 - b. Utility coordination – coordinate with the utility owners within the project area to identify potential conflicts. Clark Dietz will prepare preliminary plans for the improvements and coordinate with IDOT and utility owners for the potential relocation of utilities as required.
 - c. Plan Development – prepare pre-final plans and specifications for submittal to IDOT for review per the Phase II project approval requirements. The plans and specifications will be revised to address IDOT review comments upon approval of these comments by the Village.
 - d. Specification Development - prepare project specifications and contract documents for pre-final and final submittals to IDOT for review per the Phase II project approval requirements.

- e. Create a construction cost estimate and estimate of time for pre-final and final submittals to IDOT for review per the Phase II project approval requirements, Village budgeting, STP program budgeting, and bidding purposes.
 - f. The project plans and specs will be prepared in accordance with IDOT guidelines for STP funded projects.
4. Agency Coordination
- a. Attend one (1) Phase I and II Kickoff Meeting at IDOT's local office. Compile the meeting minutes for distribution to the Village and IDOT for approval.
 - b. Meet with Village and/or IDOT up to two (2) times to discuss project related questions, pre-final plan submittal review questions, and to ensure that the project progresses in a timely matter.
 - c. Prepare Agenda, Location Map and other materials for use at the Phase I and II Kickoff Meeting.
5. Final Design Phase
- a. Permitting - Create a Stormwater Pollution Prevention Plan (SWPPP) for submission with the Notice of Intent for construction (NOI). Also obtain a DuPage County Stormwater Management (SWM) general construction permit which will be issued by the Village as they are a full waiver community.
 - b. Perform a Quality Assurance (QA) review of the project bidding documents. Revise the final documents accordingly.
 - c. Complete the final development of the Contract Documents and submit the completed documents to IDOT for approval.
 - d. Prepare and submit all required paperwork/mylars to IDOT.
6. Bidding Assistance
- a. Assist the Village in advertising the project for construction by providing IDOT with the required information to place the project in the IDOT bulletin.
 - b. Answer bidder's questions prior to the project bid opening. Prepare addenda as needed for distribution to the project plan holders.

C. Schedule

The estimated schedule for the completion of the Contract is as follows:

Notice to Proceed	March 2016
Phase I Completion	June 2016
Preliminary Design (pre-final plan submittal)	August 2016
Final Design Phase (Final PS&E submittal)	October 2016
Permitting	November 2016
Phase II Services Completion (Letting)	January 2017

D. Assumptions/Conditions (if applicable)

This agreement is subject to the following assumptions/conditions:

1. This Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Illinois.
2. This agreement does not include the preparation of assessment roles or schedules.
3. If additional geotechnical investigation is required, this service will be hired directly by the Client. Once any additional geotechnical investigation and report are completed and approved by IDOT, it will be utilized for the Phase II design.
4. Local permits for this project (street cuts, utility relocations, etc.) will be obtained by the Client with information provided by Clark Dietz. All permit fees will be paid by the Client.
5. State permits for this project will be obtained by the Client with information provided by Clark Dietz. All permit fees will be paid by the Client.
6. This agreement assumes no Waters of the US will be impacted. The agreement does not include Section 404/401 permitting.
7. This agreement assumes no wetlands will be impacted. The agreement does not include wetland permitting through DuPage County SMC.
8. No Federal permits are anticipated for this project.
9. This agreement does not include contaminated site Phase I or Phase II environmental assessment investigations or remediation activities.
10. This agreement does not include cultural, historic, archeological, or wetland assessment investigations or remediation activities.
11. This agreement does not include the design of lighting along any portion of the project.

E. Electronic Data Format (if applicable)

Clark Dietz will provide the Plan Drawings for this project in electronic format. The files will be produced in Civil 3D 2014 on IBM PC compatible computers with the Windows 7 operating system. Clark Dietz makes no representation as to the compatibility of the files beyond the specified release of the above-stated software. Clark Dietz will not provide preliminary or intermediate phase documents in electronic format and will not provide electronic files to third parties, such as contractors or other consultants unless required for clarification purposes.

Clark Dietz will utilize current Clark Dietz standards for layering, line types, text styles, etc. in the development of the CADD files for this project. Changes in these standards requested by the Client may result in additional cost.

1. Client is aware that differences may exist between electronic files delivered and printed hard-copy documents. At the time of the delivery of the electronic files, Clark Dietz will deliver one set of hard-copy documents (full size) and three copies of (11"x17" size) plans. In the event of conflict between the electronic and hard-copy version of the documents, the hard-copy version shall govern. Client also understands the complexity associated with printing electronic files on various printing equipment. The electronic files provided by Clark Dietz are created for printing on specific equipment utilized by Clark Dietz. Clark Dietz cannot assure that Client will be able to properly print the documents on other equipment.
2. Electronic files delivered by Clark Dietz will be delivered on compact disk in a format readable by commonly available IBM PC based computer hardware using the current operating system at the time of delivery of electronic files or using our File Transfer Protocol (FTP) site.

PART II
CLIENT'S RESPONSIBILITIES

Client shall, at its expense, do the following in a timely manner so as not to delay the services:

A. Information/Reports

Provide Clark Dietz with reports, studies, site characterizations, regulatory decisions and similar information relating to the Services that Clark Dietz may rely upon without independent verification unless specifically identified as requiring such verification.

B. Representative

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define Client's requirements and make decisions with respect to the Services. **The Client representative for this Agreement will be Vydas Juskelis, P.E.**

C. Decisions

Provide all criteria and full information as to Client's requirements for the Services and make timely decisions on matters relating to the Services.

D. Other

All Village owned materials will be returned within a timely manner by Clark Dietz, Inc. but no later than 30 days following completion of the final contract documents

**PART III
COMPENSATION**

A. Compensation

Compensation for the Services shall be as follows:

Compensation for services rendered by employees working on the Project in accordance with the following Phases of PART I, SERVICES, will be at the hourly billing rates shown in the attachment, "Schedule of General Billing Rates". The total compensation authorized by this agreement shall not exceed **\$62,000**.

The compensation includes salaries, payroll taxes and insurance, employee fringe benefits, general overhead costs, profit, and project related expenses.

B. Billing and Payment

1. Timing/Format

- a. Invoices shall be submitted monthly for Services completed at the time of billing and are due upon receipt. Invoices shall be considered past due if not paid within 60 calendar days of the date of the invoice. Such invoices shall be prepared in a form supported by documentation as Client may reasonably require.
- b. If payment in full is not received by Clark Dietz within 60 calendar days of the date of invoice, invoices shall bear interest at one-and-one-half (1.5) percent of the past due amount per month, which shall be calculated from the date of the invoice.
- c. If the Client fails to make payments within 60 calendar days of the date of invoice or otherwise is in breach of this Agreement, Clark Dietz may suspend performance of services upon seven (7) calendar days' notice to the Client. Clark Dietz shall have no liability whatsoever to the Client for any costs or damages as a result of suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, Clark Dietz shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Clark Dietz to resume performance.

2. Billing Records

Clark Dietz shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

PART IV EQUAL EMPLOYMENT OPPORTUNITY

In the event of Clark Dietz's (hereinafter referred to as the "Consultant") non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporation, and the contract 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. During the performance of this contract, the Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship, status, age, physical or mental disability unrelated to ability, military status, order of protection status, 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. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's rules) 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. That, in all solicitations or advertisements for employees placed by or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age physical or mental disability unrelated to ability, military status, order of protection status, or an unfavorable discharge from military service.
4. That it will 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 Consultant's obligations under the Illinois Human Rights Act and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with the Consultant in its efforts to comply with such Act and Rules, the Consultant will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit records as required by the Department's Rules, 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.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of this contract obligations are undertaken or assumed so that such provisions will be binding upon such subconsultant. In the same manner as with other provisions of this contract, the Consultant will be liable for compliance with applicable provisions of this clause by such subconsultants; and further it will promptly notify the contracting agency and the Department in the event any subconsultant fails or refuses to comply therewith. In addition, the Consultant will not utilize any subconsultant declared by the Illinois Human Rights Commission to be ineligible for contracts with the State of Illinois or any of its political subdivisions or municipal corporations.

PART V
STANDARD TERMS AND CONDITIONS
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1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. No warranty or guarantee, express or implied is provided, including warranties or guarantees contained in any uniform commercial code.
2. **CHANGE OF SCOPE.** The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Clark Dietz and Client. Clark Dietz will promptly notify Client of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.
3. **DELAYS.** If events beyond the control of Clark Dietz, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay exceeds 90 days, Clark Dietz shall be entitled to an equitable adjustment in compensation and extension of time.
4. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. Client shall pay Clark Dietz for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.
5. **REUSE OF INSTRUMENTS OF SERVICE.** All reports, drawings, specifications, computer data, field data notes and other documents prepared by Clark Dietz as instruments of service shall remain the property of Clark Dietz. Clark Dietz shall retain all common law, statutory and other reserved rights, including the copyright thereto. Reuse of any instruments of service including electronic media, for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written authorization or adaptation by Clark Dietz for the specific purpose intended, shall be at Client's sole risk.
6. **ELECTRONIC MEDIA.** Electronic files furnished by either party shall be subject to an acceptance period of 30 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. In the event of a conflict between the signed construction documents prepared by Clark Dietz and electronic files, the signed or sealed hard-copy construction documents shall govern. Under no circumstances shall delivery of electronic files for use by Client be deemed a sale by Clark Dietz and Clark Dietz makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Clark Dietz be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.
7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by Clark Dietz is supplied for the general guidance of the Client only. Since Clark Dietz has no control over competitive bidding or market conditions, Clark Dietz cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.
8. **SAFETY.** Clark Dietz specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Clark Dietz employees.
9. **RELATIONSHIP WITH CONTRACTORS.** Clark Dietz shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors. Clark Dietz specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Client's contractors.
10. **THIRD PARTY CLAIMS:** This Agreement does not create any right or benefit for parties other than Clark Dietz and Client.
11. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.
12. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by Clark Dietz and shall not be made available to third parties without written consent of Client, unless so required by court order.
13. **INSURANCE.** Clark Dietz will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with legal, and Clark Dietz business requirements. Certificates evidencing such coverage will be provided to Client upon request. For projects involving construction, Client agrees to require its construction contractor, if any, to include Clark Dietz as an additional insured on its commercial general liability policy relating to the Project, and such coverages shall be primary.
14. **INDEMNITIES.** Clark Dietz agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees against all damages, liabilities or costs, to the extent caused by Clark Dietz' negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Clark Dietz is legally liable.

**PART V
STANDARD TERMS AND CONDITIONS**

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The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Clark Dietz, its officers, directors, employees and subconsultants against all damages, liabilities or costs, to the extent caused by the Client's negligent acts in connection with the Project and that of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor Clark Dietz shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

15. **LIMITATIONS OF LIABILITY.** No employee or agent of Clark Dietz shall have individual liability to Client. ~~Client agrees that, to the fullest extent permitted by law, Clark Dietz' total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Clark Dietz' negligence, error, omissions, strict liability, or breach of contract shall not exceed the total compensation received by Clark Dietz under this Agreement or:~~

- ~~• If the Clark Dietz fee is less than \$1,000,000, the liability shall not exceed the greater of \$100,000 or the total compensation received by Clark Dietz, or~~
- ~~• If the Clark Dietz fee is equal to or more than \$1,000,000, the liability shall be limited to the applicable insurance coverage at the time of settlement or judgment.~~

16. **ACCESS.** Client shall provide Clark Dietz safe access to the project site necessary for the performance of the services.

17. **ASSIGNMENT.** The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

18. **HAZARDOUS MATERIALS.** Clark Dietz and Clark Dietz' consultants shall have no responsibility for discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If required by law, the client shall accomplish all necessary inspections and testing to determine the type and extent, if any, of hazardous materials at the project site. Prior to the start of services, or at the earliest time such information is learned, it shall be the duty of the Client to advise Clark Dietz (in writing) of any known or suspected hazardous materials. Removal and proper disposal of all hazardous materials shall be the responsibility of the Client.

19. **REMODELING AND RENOVATION.** For Clark Dietz' services provided to assist the Client in making changes to an existing facility, the Client shall furnish documentation and information upon which Clark Dietz may rely for its accuracy and completeness. Unless specifically authorized or confirmed in writing by the Client, Clark Dietz shall not be required to perform or have others perform destructive testing or to investigate concealed or unknown conditions. The Client shall indemnify and hold harmless Clark Dietz, Clark Dietz' consultants, and their employees from and against claims, damages, losses and expenses which arise as a result of documentation and information furnished by the Client.

20. **CLIENT'S CONSULTANTS.** Contracts between the Client and other consultants retained by Client for the Project shall require the consultants to coordinate their drawings and other instruments of service with those of Clark Dietz and to advise Clark Dietz of any potential conflict. Clark Dietz shall have no responsibility for the components of the project designed by the Client's consultants. The Client shall indemnify and hold harmless Clark Dietz, Clark Dietz' consultants and their employees from and against claims, damages, losses and expenses arising out of services performed for this project by other consultants of the Client.

21. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

22. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

23. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project Completion.

24. **DISPUTE RESOLUTION.** ~~In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, Clark Dietz and the Client agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties. Third, if the dispute or any issues remain unresolved after the above steps, the parties agree to attempt resolution by submitting the matter to voluntary nonbinding arbitration in accordance with rules and procedures to be agreed upon by the parties.~~

SCHEDULE OF GENERAL BILLING RATES

CLARK DIETZ, INC.

January 1, 2016

<u>TITLE</u>	<u>HOURLY RATE</u>
Principal	\$230.00
Engineer 8	210.00
Engineer 7	190.00
Engineer 6	180.00
Engineer 5	160.00
Engineer 4	140.00
Engineer 3	125.00
Engineer 2	110.00
Engineer 1	100.00
Technician 6	160.00
Technician 5	135.00
Technician 4	125.00
Technician 3	105.00
Technician 2	85.00
Technician 1	75.00
Clerical	80.00

Notes:

The rates in this schedule will be reviewed and adjusted as necessary but not sooner than six months after the date listed above. Rates include actual salaries or wages paid to employees of Clark Dietz plus payroll taxes, FICA, Worker's Compensation insurance, other customary and mandatory benefits, and overhead and profit. All project related expenses and subconsultants will be billed at 110% of actual cost to cover handling and administrative expenses.