

VILLAGE OF VERNON HILLS

ORDINANCE NO. 2020-020

AN ORDINANCE WAIVING THE COMPETITIVE BIDDING PROCESS AND
AUTHORIZING A CONTRACT WITH KELLENBERGER PLUMBING &
UNDERGROUND, INC. FOR AN AMOUNT NOT TO EXCEED \$17,390

THE 18th DAY OF FEBRUARY 2020

Published in pamphlet form by the Authority of the
President and Board of Trustees of the Village of
Vernon Hills, Lake County, Illinois, this
18th Day of February 2020

**VILLAGE OF VERNON HILLS
ORDINANCE 2020-020**

**AN ORDINANCE WAIVING THE COMPETITIVE BIDDING PROCESS AND
AUTHORIZING A CONTRACT WITH KELLENBERGER PLUMBING &
UNDERGROUND, INC. FOR AN AMOUNT NOT TO EXCEED \$17,390**

WHEREAS, the Village of Vernon Hills, County of Lake, State of Illinois (*“the Village”*) is a duly organized and existing municipality and unit of local government created under the provisions of the laws of the State of Illinois, and is operating under the provisions of the Illinois Municipal Code; and

WHEREAS, the Village Board has reviewed improvements to the Vernon Hills Athletic Complex (VHAC), and the installation of a Sports Turf field; and

WHEREAS, the improvements included ancillary items such as sanitary manhole relocations; and

WHEREAS, two sanitary manholes exist within the limits of the new Sports Turf fields which will be abandoned; and

WHEREAS, access for the maintenance of the sanitary sewer system for the VHAC bathrooms requires that manholes be spaced less than 500 feet; and

WHEREAS, a new manhole will need to be installed immediately south of the existing southerly manhole which will be abandoned to meet the 500 foot criteria; and

WHEREAS, Lake County Public Works Department (LCPW) owns and operates the sanitary sewer system; and

WHEREAS, LCPW is receptive to the modifications above their system conditioned upon that they are not responsible for the replacement of the Sports Turf field and appurtenances; and

WHEREAS, the Village is receptive to this condition and agrees to enter into a Memorandum of Understanding subject to the Village Manager’s approval regarding maintenance of this sanitary sewer system; and

WHEREAS, the Village requested proposals and Kellenberger Plumbing & Underground, Inc. of Elgin, IL submitted the lowest competitive proposal in the amount not to exceed \$17,390; and

WHEREAS, staff recommends entering into a contract with Kellenberger Plumbing & Underground, Inc. for a not to exceed amount of \$17,390.

**NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND
BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE
COUNTY, ILLINOIS, AS FOLLOWS:**

SECTION 1: EXECUTION OF AGREEMENT: The Village Manager is hereby authorized to execute all required documents with Kellenberger Plumbing & Underground, Inc. of Elgin, IL for a price not to exceed \$17,390. Additionally, the Village Manager is authorized to execute a Memorandum of Understanding with Lake County Public Works for maintenance of the sanitary sewer serving the VHAC facilities.

SECTION 2: AUTHORIZATION & RELEASE OF PAYMENT: The Finance Director is hereby authorized to make payment to Kellenberger Plumbing & Underground, Inc. in an amount not to exceed \$17,390.

SECTION 3: EFFECTIVE DATE: This Ordinance shall be in full force and effect from its passage and approval.

SECTION 4: ORDINANCE NUMBER: This Ordinance shall be known as Ordinance Number 2020-020.

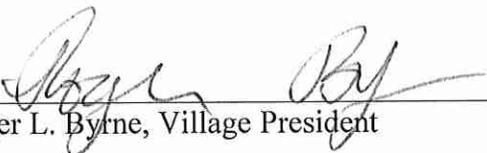
Dated the 18th of February, 2020

Adopted by roll call votes as follows:

AYES: 02/18/2020

NAYS: 02/18/2020

ABSENT AND NOT VOTING: 02/18/2020



Roger L. Byrne, Village President

PASSED: 02/18/2020
APPROVED: 02/18/2020
ATTEST: 02/18/2020





Mark Fleischhauer, Village Clerk

**CONTRACT BETWEEN
VILLAGE OF VERNON HILLS
AND
KELLENBERGER PLUMBING AND UNDERGROUND, INC.**

In consideration of the mutual promises set forth below, the Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, IL 60061-1039, an Illinois municipal corporation ("Owner"), and Kellenberger Plumbing and Underground, Inc., ("Contractor"), make this Contract as of the 19th day of February, 2020, and hereby agree as follows:

**ARTICLE I
THE WORK**

1.1 **Performance of the Work.** Contractor shall, at its sole cost and expense, provide, perform, and complete all of the following work described on Attachment A and in this Section 1.1, all of which is herein referred to as the "Work". To the extent the terms of this Contract and the document attached as Attachment A conflict, the terms of this Contract shall control.

- A. **Labor, Equipment, Materials and Supplies.** See Exhibit A.
- B. **Price.** Contractor shall not to exceed \$17,390.00
- C. **Insurance.** Procure and furnish all certificates and policies of insurance specified in this Contract.
- D. **Taxes.** Pay all applicable federal, state, and local taxes.
- E. **Quality.** Provide, perform and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent herewith, with only new, undamaged and first quality equipment, materials and supplies.

1.2 **Commencement and Completion Dates.** This contract shall commence on March 2, 2020 until completion of the work March 13, 2020 ("Contract Time")

1.3 **Technical Ability to Perform.** Contractor represents and warrants that it is sufficiently experienced and competent, and has the necessary capital, facilities,

organization, and staff, to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.4 **Financial Ability to Perform.** Contractor represents and warrants that it is financially solvent, and Contractor has the financial resources necessary to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.5 **Time.** Contractor represents and warrants that it is ready, willing, able and prepared to begin the work on the Commencement Date and that the Contract Time is sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract Price, all with due regard to all natural and man-made conditions that may affect the Work or the Work Site and all difficulties, hindrances, and delays that may be incident to the Work.

1.6 **Safety at the Work Site.** Contractor shall be solely and completely responsible for providing and maintaining safe conditions at the Work Site, including the safety of all persons and property during performance of the Work. This requirement shall apply continuously and shall not be limited to normal working hours. Contractor shall take all safety precautions as shall be necessary to comply with all applicable laws and to prevent injury to persons and damage to property.

Contractor shall conduct all of its operations without interruption or interference with vehicular and pedestrian traffic on public and private rights-of-way.

1.7 **Cleanliness of the Work Site and Environs.** Contractor shall keep the Work Site and adjacent areas clean at all times during performance of the Work and shall, upon completion of the Work, leave the Work Site and adjacent areas in a clean and orderly condition.

1.8 **Damage to the Work, the Work Site, and Other Property.** Contractor shall have no claim against Owner because of any damage or loss to the Work or to Contractor's equipment, materials, or supplies from any cause whatsoever, including damage or loss due to simultaneous work by others. Contractor shall, promptly and without charge to Owner, repair or replace, to the satisfaction of Owner, any damage done to, and any loss suffered by, the Work and any damage done to, and any loss suffered by, the Work Site or other property as a result of the Work. Notwithstanding any other provision of this Contract, Contractor's obligations under this Section shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any

insurance, either of Owner or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this Section.

1.9 Owner's Right to Terminate or Suspend Work for Convenience.

A. **Termination of Suspension for Convenience.** Owner shall have the right, for its convenience, to terminate or suspend the Work in whole or in part at any time by written notice to Contractor. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Contractor shall, as and to the extent directed, stop Work under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Work under existing orders and subcontracts, and cancel any outstanding orders or subcontracts that may be canceled.

B. **Payment for Completed Work.** In the event of any termination pursuant to Subsection 1.9A above, Owner shall pay Contractor (1) such direct costs, excluding overhead, as Contractor shall have paid or incurred for all Work done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination. Any such payment shall be offset by any prior payment or payments and shall be subject to owner's rights to withhold and deduct as provided in this Contract. Furthermore any payment by Owner made pursuant to this section, including the amount of any offsets due to a prior payment or payments, shall not exceed the Contract Price set forth in Attachment A unless such a payment is permitted by and granted under the terms and conditions set forth in Article V and Attachment A.

**ARTICLE II
CHANGES AND DELAYS**

2.1 **Changes.** Owner shall have the right, by written order executed by Owner, to make changes in the Contract, the Work, the Work Site, and the Contract Time ("Change Order"). If any Change Order causes an increase or decrease in the amount of the Work, an equitable adjustment in the Contract Price or Contract Time may be made. No claims for equitable adjustments in the Contract Price or Contract Time shall be made or allowed unless embodied in a Change Order signed by Owner. All claims by Contractor for an equitable adjustment in either the Contract Price or the Contract Time shall be made within two (2) business days following receipt by Contractor of such Change Order, and shall, if not made prior to such time, be conclusively deemed to have been waived. No decrease in the amount of the Work caused by any Change Order shall entitle Contractor to make any claim for damages, anticipated profits, or other compensation.

**ARTICLE III
CONTRACTOR'S RESPONSIBILITY FOR DEFECTIVE WORK**

3.1 Inspection: Correction of Defects.

A. **Inspection.** All parts of the Work shall be subject to inspection by Owner or its designated representatives.

B. **Correction.** Contractor shall, promptly and without charge, repair, correct, or replace all or any portion of the Work that is defective, damaged, flawed, or unsuitable or that in any way fails to conform strictly to the requirements of this Contract.

3.2 **Owner's Right to Correct.** If, within ten (10) business days after Owner gives Contractor written notice of any unsuitability or nonconformity, Contractor fails to make, or undertake with due diligence to make, the necessary corrections, then Owner shall be entitled to make, either with its own forces or with contract forces, the corrections and to recover from Contractor all resulting costs, expenses, losses, or damages, including attorneys fees and administrative expenses.

**ARTICLE IV
INSURANCE**

4.1 **Insurance.** Contemporaneous with Contractor's execution of this Contract, Contractor shall provide certificates and policies of insurance evidencing the minimum insurance coverages and limits set forth in the attached Exhibit C. Contractor shall also provide a Certificate of insurance naming the Village and Lake County Department of Public Works, as an Additional Insured.

**ARTICLE V
PAYMENT**

5.1 **Contract Price.** Owner shall pay to Contractor, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Contractor shall accept in full satisfaction for providing, performing, and completing the Work, the amount or amounts set forth in Attachment A (the "Contract Price"), subject to any additions, deductions, or withholdings provided for in the Contract.

5.2 **Taxes and Benefits.** Owner is exempt from and shall not be responsible to pay, or reimburse Contractor for, any state or local sales, use, or exercise taxes.

5.3 **Payment.**

A. **Payment in Installments.** Partial payment shall be made upon certification by the Engineer to the Village that said payment is due for work completed in accordance with the terms of the contract. It will then be the Contractor's responsibility to furnish Waivers of Lien and Contractor's Affidavits with partial payment estimates.

B. **Pay Requests.** Contractor shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner a pay request.

5.4 **Deductions.**

A. **Owner's Right to Withhold.** Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any progress payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Contractor is liable under this Contract; (3) state or local sales, use, or exercise taxes from which Owner is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of subcontractors, suppliers, or other persons regardless of merit; (6) delay in the progress or completion of the Work; (7) inability of Contractor to complete the Work; (8) failure of Contractor to properly complete or document any Pay Request; (9) any other failure of Contractor to perform any of its obligations under this Contract; or (10) the cost to Owner, including attorney's fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.3 of this Contract.

B. **Use of Withheld Funds.** Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.4A above until Contractor shall have either performed the obligations in question or furnished security or such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Contractor under this Contract.

**ARTICLE VI
DISPUTES AND REMEDIES**

6.1 Dispute Resolution Procedure

A. **Notice of Disputes and Objections.** If Contractor disputes or objects to any requirement, direction, instruction, determination, or decision of Owner, Contractor may notify Owner in writing of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof, provided, however, that Contractor shall, nevertheless, proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Owner, without regard to such dispute or objection. Unless Contractor so notifies Owner within two (2) business days after receipt of such requirement, directions, instruction, interpretation, determination, or decision, Contractor shall be conclusively deemed to have waived all such disputes or objections and all claims based thereon.

B. **Negotiation of Disputes and Objections.** To avoid and settle without litigation any such dispute or objection, Owner and Contractor agree to engage in good faith negotiations. Within three (3) business days after Owner's receipt of Contractor's written notice of dispute or objection, a conference between Owner and Contractor shall be held to resolve the dispute. Within three (3) business days after the end of the conference, Owner shall render its final decision, in writing, to Contractor. If Contractor objects the final decision of Owner, then it shall, within three (3) business days, give Owner notice thereof and, in such notice, shall state its final demand for settlement of the dispute. Unless Contractor so notifies Owner, Contractor shall be conclusively deemed (1) to have agreed to and accepted Owner's final decision and (2) to have waived all claims based on such final decision.

6.2 **Contractor's Remedies.** If Owner fails or refuses to satisfy a final demand made by Contractor pursuant to Section 6.1 of this Contract, or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of Contractor, within ten (10) days following receipt of such demand, then Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity.

6.3 **Owner's Remedies.** If it should appear at any time prior to Final Payment that Contractor has failed or refused to prosecute, or has delayed in the prosecution of, the Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Contract on or before the Completion Date, or has

attempted to assign this Contract or Contractor's rights under this Contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Contract or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five (5) business days after Contractor's receipt of written notice Event of Default, then Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Owner may require Contractor, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work Site any such Work; to accelerate all or any part of the Work; and to take any and all other action necessary to bring Contractor and the Work into compliance with this Contract.
2. Owner may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph 1 above and withhold or recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by Owner in connection therewith.
3. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.
4. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
5. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.

6.4 **Terminations and Suspensions Deemed for Convenience.** Any termination or suspension of Contractor's rights under this Contract for an alleged default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension, for the convenience of Owner under Section 1.9 of the Contract.

**ARTICLE VII
LEGAL RELATIONSHIPS AND REQUIREMENTS**

7.1 **Required Certifications.** Contractor shall execute the Certification attached as Exhibit D certifying that Contractor, its shareholders holding more than five (5%) percent of the outstanding shares of Contractor, its officers and directors are:

- (A) not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 651LCS 5/1 1-42,1-1;
- (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 5133E-3 and 5133E-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 the Equal Employment Opportunity Act and all other state and federal laws and regulations prohibiting unlawful discrimination and that during, the performance of the Agreement, Contractor 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 woman are underutilized and will take appropriate affirmative action to rectify any such underutilization;
 - 2. 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 Right's 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 Contractor'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 Contractor in its efforts to comply with such Act and Rules and Regulations, Contractor will promptly notify the Illinois Department of Human Rights and Contractor 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; and
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. in compliance with 775 ILCS 5/2-1.05(A)(4) by having in place and enforcing a written sexual harassment policy;
9. 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, Contractor may be declared ineligible for future contracts with Client, 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;
10. in compliance with 30 ILCS 580/1 et seq. (Drug Free Workplace Act) by providing a drug-free workplace by publishing a statement:
 - (a) notifying employees that the unlawful manufacture, or distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in Contractor'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
 - (d) 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.
 - (e) establishing a drug-free awareness program to inform employees about:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) Contractor's policy of maintaining a drug-free workplace;

- (iii) any available drug counseling, rehabilitation, and employee assistance program; and
 - (iv) the penalties that may be imposed upon employees for drug violations;
 - (v) making it a requirement to give a copy of the statement required to each employee engaged in the performance of the Agreement, and to post the statement in a prominent place in the workplace;
 - (vi) notifying Client within ten (10) days after receiving notice from any employee or otherwise receiving actual notice of any conviction;
 - (vii) 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;
 - (viii) assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicated that a trained referral team is in place; and
 - (ix) making a good faith effort to continue to maintain a drug- free workplace through implementation of this section; and
- 11.** not in violation of Village Ordinances by Contractor having given to any officer, employee, spouse of or immediate family member living with any officer or employee of Client any gift except as otherwise permitted therein.
- 12.** Is currently and will remain in compliance Employment of Illinois Workers on Public Works Act (30 ILCS 570/1 through 570/7):
- (A) Whenever there is a period of excessive unemployment in Illinois, which is defined herein as any month immediately following two (2) consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded five (5%) percent as measured by the United States Bureau of labor Statistics in its monthly publication of employment and unemployment figures, Contractor and all Trade Contractors shall employ only Illinois laborers. "Illinois Laborers" means any person who has

resided in Illinois for at least thirty (30) days and intends to become or remain an Illinois resident.

(B) Other laborers may be used when Illinois laborers as defined herein are not available, or are incapable of performing the particular type of work involved, if so certified by Contractor and approved by the Architect. Contractor may place no more than three (3) of its regularly employed non-resident executive and technical experts, who do not qualify as Illinois laborers, to do work encompassed by this Agreement during periods of excessive unemployment.

(C) This provision applies to all labor, whether skilled, semi-skilled, whether manual or non-manual.

7.2 **Indemnity Hold Harmless Provision.** To the fullest extent permitted by law, Contractor hereby agrees to defend, indemnify and hold harmless Client, its officials, agents, employees and volunteers against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, cost and expenses, which may in anyway accrue against Client, its agents, officials, employees and volunteers, arising in consequence of the negligent or willful conduct by Contractor, its employees, or subcontractors, or which may in anyway result therefore. Contractor shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and If any judgment shall be rendered against Client, its officials, agents, employees and volunteers, in any such action, At Clients option, Contractor shall, at its own expense, satisfy and discharge the same. Nothing contained herein shall require Contractor to indemnify the Client for the negligence or willful act of Client, its officials, employees, volunteers or others. Nothing contained herein shall waive any immunities Client may assert in response to any such claims.

7.3 **Binding Effect.** This Contract shall be binding upon Owner and Contractor and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.4 **Relationship of the Parties.** Contractor shall act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Contract shall be construed to create the relationship of principal and agent, partners, or joint venturers between Owner and Contractor.

7.5 **No Collusion.** Contractor hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Contractor has, in procuring this Contract, colluded with any other person, firm, or corporation, then Contractor shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

7.6 **Assignment.** Contractor shall not (1) assign this Contract in whole or in part, (2) assign any of Contractor's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner.

7.7 **Notices.** All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third (3) business day after being deposited in any United States Post Office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested or one (1) business day after being delivered to a recognized overnight delivery service for guaranteed next business day delivery.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

Village of Vernon Hills Public Works Department
490 Greenleaf Drive
Vernon Hills, IL 60061-1039
Attention: David H. Brown P.E.
Director of Public Works/ Village Engineer

Notices and communications to Contractor shall be addressed to, and delivered at, the following address:

Kellenberger Plumbing and Underground, Inc.
13N365 High Chapparel Ct.
Elgin, IL 60124

7.8 **Governing Laws.** This Contract and the rights of Owner and Contractor under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, or the State of Illinois.

7.9 **Compliance with Laws and Grants.** Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable statutes, ordinances, rules, and regulations.

In accordance with the Illinois Prevailing Wage Act Ill. Rev. Stat. 820 ILCS 130/1 et seq., the Contractor (and all subcontractors hired by Contractor) shall not pay less to all laborers, workman, and mechanics performing work under this Agreement that the prevailing rate of wages for similar work in the locality of the Village of Vernon Hills. Not less than the prevailing rate of wages as found by Owner or the Department of Labor or determined by a Court on review shall be paid to all laborers, workers and mechanics performing work under this Contract The Contractor and each subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers and mechanics employed by them on this contract, and also showing the actual hourly wages paid to each of such persons. The submission by the Contractor and each subcontractor of payrolls, or copies thereof, is not required. However, the Contractor and each subcontractor shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract and delivered to Owner upon written request by Owner. If the Department of Labor revised the prevailing rate of hourly wages to be paid by the public body, the revised rate as provided by the public body shall apply to this Contract. Contractor shall require each subcontractor to comply with the provisions of this Section 7.9.

7.10 **Time.** The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

7.11 **Severability.** The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provision of this Contract shall be in any way affected thereby.

7.12 **Amendments.** No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Contractor.

IN WITNESS WHEREOF

VILLAGEOF VERNON HILLS

CONTRACTOR: *Kellenberger Plumbing & Underground, Inc.*

By: *[Signature]*

By: *Miles Kellum*

Title: *Village Manager*

Title: *Vice President*

Attest/Witness:

Attest/Witness

By: *[Signature]*

By: *Abby Van Stodum*

Title: *Executive Secretary*

Title: *Administrative*

STATE OF ILLINOIS)
) SS
COUNTY OF)

CONTRACTOR'S CERTIFICATION

Miles Kellenberger, being first duly sworn on oath, deposes and states that all statements herein are made on behalf of Contractor, that this deponent is authorized to make them, and that all statements contained herein are true and correct.

Contractor deposes, states, and certifies that Contractor is not barred from contracting with a unit of state or local government as a result of a violation of either 720 ILCS 5/33E-3 or 33E-4 of the Criminal Code of 1961.

DATED this 19th day of February, 2020.

Attest/Witness

By: Abby Van Holm

Title: Administrative

By: Miles Kellenberger

Title: Vice President

Subscribed and Sworn to
before me this 19th day
of February, 2020.

[Signature]
Notary Public



ATTACHMENT A

SCOPE OF WORK TO BE PERFORMED:

This work shall be done in accordance with the requirements of the Lake County Department of Public Works Engineering Standards, current edition, The Standard Specifications for Water and Sewer Construction in Illinois, current edition and the Village of Vernon Hills Code of Ordinances Appendix B Development Regulations Engineering Specifications.

- Manhole shall be five (5) foot in diameter reinforced concrete and constructed as a "dog-house" style construction with precast bottom.
- Manhole shall have precast reinforced concrete barrel sections (min. 5" thick) with tongue and groove joints.
- Precast concrete cone 2'-6" minimum, with 3" minimum corbel.
- 2 each adjusting rings (2" min., 8" max.), use *trowelable* mastic between cone, rings, and frame, no grout.
- External chimney seal Cretex "Classic", CANUSA "Wrapidseal", or Adaptor Inc. All barrel section joints to have external wrap same suppliers as noted for chimney seal.
- Manhole steps precast 16" O.C. (M.A. Industries PS2-PF or equal).
- Structure bedding and trench backfill shall be CA-7 Crushed Limestone aggregate per Village Exhibit 1. Trench backfill shall be extended to 1' over the top of the pipe. Excavated material shall be placed for remaining backfill and compacted in equal lifts.
- Frame and Grate shall be Neenah R-1772 or East Jordan 1022 Frame and Lid with concealed pickhole and self-sealing gasket with machined horizontal bearing surface with "Sanitary" cast into lid.
- Existing 8" PVC pipe shall be neatly saw cut between the 9 o'clock and 3 o'clock position and the space between the structure walls and pipe filled with a I.D.O.T. Class SI concrete mix to form a new bench.

Work shall include all costs for all labor, materials, transportation, excavation, trench backfill and bedding, disposal of excess excavated materials, handling and incidentals necessary to complete this item.

Restoration to be performed by the Village of Vernon Hills Public Works Department.

ATTACHMENT B

DESCRIPTION OF WORK SITE

- Vernon Hills Athletic Complex, 300 Nike Parkway

EXHIBIT A

INSURANCE REQUIREMENTS

CONTRACTOR AGREES TO MAINTAIN THE FOLLOWING:

Property Insurance:

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- Comprehensive General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Minimum General Aggregate shall be no less than \$5,000,000 per person per aggregate.
- Villages and Contractors Protective Liability: \$2,000,000 combined single limit per occurrence.
- Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- Worker's Compensation and Employers' Liability: Worker's Compensation limits as required by the Labor Code of the State of Illinois and Employers' Liability limits of \$500,000 per accident.

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, Lake County Department of Public Works, its officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

Other Insurance Provisions

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

Commercial General Liability, the Villages and Contractors Protective Liability and Automobile Liability Coverage

- a. The Village, Lake County Department of Public Works, its officials, employees and volunteers are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of Contractor and for materials, and equipment procured, owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limits on the scope of the protection afforded to The Village, Lake County Department of Public Works, its officials, employees or volunteers.
- b. Contractor's insurance coverage shall be primary insurance as respects the Village, Lake County Department of Public Works, its officials, employees and volunteers. Any insurance or self-insurance maintained by

the Village, Lake County Department of Public Works, its officials, employees or volunteers shall be excess of Contractor'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, Lake County Department of Public Works, its officials, employees or volunteers.
- d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits or the insurer's liability.

Worker's Compensation and Employers' Liability Coverage

The insurer shall agree to waive all rights or subrogation against the Village, Lake County Department of Public Works, its officials, employees or volunteers for losses arising from work performed by Contractor for The Village.

All Coverages

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

Acceptability of Insurers

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

Certificates of Insurance

Contractor shall furnish The Village with certificates of insurance and copies of all policies of insurance naming The Village, the Lake County Department of Public Works, its officials, agents, employees and volunteers as additional insureds, and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each 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 municipality and are to be received and approved by the municipality before any work commences. The Village reserves the right to request full certified copies of the insurance policies.

EXHIBIT B

CONTRACTOR CERTIFICATION

Contractor hereby certifies that Contractor, its shareholders holding more than five percent (5%) of the outstanding shares of Contractor, its officers and directors are:

- (A) not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 651LCS 5/1 1-42,1-1;
- (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 5133E-3 and 5133E-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 the Equal Employment Opportunity Act and all other state and federal laws and regulations prohibiting unlawful discrimination and that during, the performance of the Agreement, Contractor 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. 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 Contractor'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 Contractor in its efforts to comply with such Act and Rules and Regulations, Contractor will promptly notify the Illinois Department of Human Rights and Contractor 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; and
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. in compliance with 775 ILCS 5/2-1.05(A)(4) by having in place and enforcing a written sexual harassment policy;
9. 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, Contractor 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;

10. in compliance with 30 ILCS 580/1 et seq. (Drug Free Workplace Act) by providing a drug-free workplace by publishing a statement:
 - (a) notifying employees that the unlawful manufacturer, or distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in Contractor'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) 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
 - (iii) establish a drug-free awareness program to inform employees about:
 - (iv) the dangers of drug abuse in the workplace;
 - (v) Contractor's policy of maintaining a drug-free workplace;
 - (vi) any available drug counseling, rehabilitation, and employee assistance program; and
 - (vii) the penalties that may be imposed upon employees for drug violations;
 - (viii) make it a requirement to give a copy of the statement to each employee engaged in the performance of the Agreement, and to post the statement in a prominent place in the workplace;
 - (d.) notifying the Village within ten (10) days after receiving notice from any employee or otherwise receiving actual notice of any conviction;

- (e) 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;
 - (f) assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicated that a trained referral team is in place; and
 - (g) making a good faith effort to continue to maintain a drug-free workplace through implementation of this section; and
11. not in violation of Village Ordinances by Contractor having given to any officer, employee, spouse of or immediate family member living with any officer or employee of The Village any gift except as otherwise permitted therein.
12. Is currently and will remain in compliance Employment of Illinois Workers on Public Works Act (30 ILCS 570/1 through 570/7):
- (A) Whenever there is a period of excessive unemployment in Illinois, which is defined herein as any month immediately following two (2) consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded five (5%) percent as measured by the United States Bureau of labor Statistics in its monthly publication of employment and unemployment figures, Contractor and all Trade Contractors shall employ only Illinois laborers. "Illinois Laborers" means any person who has resided in Illinois for at least thirty (30) days and intends to become or remain an Illinois resident.
 - (B) Other laborers may be used when Illinois laborers as defined herein are not available, or are incapable of performing the particular type of work involved, if so certified by Contractor and approved by the Architect. Contractor may place no more than three (3) of its regularly employed non-resident executive and technical experts, who do not qualify as Illinois laborers, to do work encompassed by this Agreement during periods of excessive unemployment.
 - (C) This provision applies to all labor, whether skilled, semi-skilled, whether manual or non-manual.

IN WITNESS WHEREOF Contractor has hereunto set his/their hands and seals this

19th day of February, 2020.

CONTRACTOR

Kellenberger Plumbing & Underground, Inc.

By: Mike Kellenberger

Name: Mike Kellenberger

Title: Vice President

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, MARK FLEISCHHAUER, BEING FIRST DULY APPOINTED, DEPOSES AND SAYS ON OATH THAT AS VILLAGE CLERK OF THE VILLAGE OF VERNON HILLS, HE DID CAUSE THE FOREGOING CERTIFICATE FOR ORDINANCE NO. 2020-2020 - AN ORDINANCE WAIVING THE COMPETITIVE BIDDING PROCESS AND AUTHORIZING A CONTRACT WITH KELLENBERGER PLUMBING & UNDERGROUND, INC. FOR AN AMOUNT NOT TO EXCEED \$17,390.



Mark Fleischhauer
Village Clerk

SUBSCRIBED AND SWORN TO BEFORE
THIS 3RD DAY OF MARCH 2020



Notary Public

