

This Services Agreement is made this 22nd day of March 2013 by and between Cardno JFNew and Wheaton Park District ("Client") of the following address:

Wheaton Park District
1000 Manchester Rd
Wheaton, Illinois 60187

Attn: Deborah Seymour
Phone: 630-653-5429
Fax: 630-665-8946
Email: dseymour@wheatonparks.org

Cardno JFNew has set up Project Number 0807154.04 to perform the following services. Please review to this Project Number on all correspondence and remittances pertaining to this project. All notices, inquiries, and instructions should be directed to Cardno JFNew's project manager.

1. Cardno JFNew will provide aquatic vegetation services for the 2013 season at the following ponds:

- Seven Gables
- Toohy
- Rathje
- Park District Service Center
- Herrick

The term of this Agreement shall commence on March 26, 2013, weather permitting and, unless terminated earlier as provided herein, shall end on October 31, 2013, weather permitting.

The basins, totaling 6 acres, are located within Wheaton, DuPage County, Illinois. In consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

2. **Services.**

A. **Algae Control and Monitoring.** Cardno JFNew will schedule controlled events approximately every two weeks throughout the growing season (April-October), with an estimated number of treatments to reach twenty (20) during this period. Control efforts will be based on the conditions present and expected at each site at the time of inspection/treatment. Cardno JFNew will schedule the visits contingent upon the need for each site and will include diagnostic monitoring, minor trash removal, and applications of industry-standard products to treat algae.

Not to Exceed: \$528.00 per visit x 20 visits = \$10,560.00

B. **Aquatic Herbicide Spot-Application.** Cardno JFNew will perform one (1) spot application of aquatic herbicide to control various plants in the pond(s). The event will be scheduled once the plants are actively growing (July-August) to maximize the effectiveness of treatment. No irrigation for five days following treatment. Price includes all ponds.

Not to Exceed: \$1,962.00 per treatment x 1 treatment = \$1,962.00

C. **Manual Removal.** If needed, Cardno JFNew will schedule two (2) treatments either by manual crew or aquatic harvester for removal of algae and plant debris from surface of the water. Price is per day, includes one operator, and does not include removal off site.

Not to Exceed: \$1,980.00 per treatment x 2 treatments = \$3,960.00

The above shall collectively be referred to as the "Services."

The Client is not subject to Illinois State sales tax and shall provide Cardno JFNew its sales tax exemption number for use in connection with the purchase of materials pursuant to this Agreement.

Aquatic treatments will be performed by qualified personnel with appropriate license and endorsement for the application of aquatic herbicides and other chemicals consistent with product labeling and industry standards for aquatic plant management techniques.

If necessary, additional services can be requested and authorized in writing by the Wheaton Park District. Cardno JFNew's services include all professional services and reimbursable expenses, excluding applicable sales tax.

3.0. Terms and Conditions

3.1. Compensation for Services. Payment shall be made by the Client to Cardno JFNew upon the Client's receipt of an invoice itemizing the Services properly performed, as determined by the Client, for the period covered by the invoice. Cardno JFNew will invoice the Client on a monthly basis. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*). Each invoice shall include a description of the Services completed to the date of the invoice and with respect to any additional services included, the nature of the additional services, the date those additional services were approved by the Client.

3.2. Services Outside Scope of Agreement. Services not set forth or listed in this Agreement are specifically excluded from the scope of Services. If circumstances or conditions that were not originally contemplated by or known to Cardno JFNew are revealed, to the extent they affect the scope of Services; the Parties may amend this Agreement accordingly. Cardno JFNew will provide additional services outside of those described in Section 2, upon written approval from the Client or upon verbal approval from Client followed by a confirmation letter from Cardno JFNew. These additional services will be outside the scope of this Agreement and will be billed to the Client at Cardno JFNew's standard hourly rates plus reasonable expenses.

3.3. Standard Hourly Rates. The following Hourly Rates are subject to change, upon at least thirty (30) days prior written notice to Client.

Field Technician/Specialist	\$45-100/hour
Project Assistant/Coordinator	\$55-115/hour
Senior Project Assistant/Coordinator	\$70-120/hour
Computer/Production Specialist	\$60-120/hour
Technical Editor	\$100-150/hour
GIS, CADD, or Drafting Consultant	\$80-130/hour
Assistant Staff Consultant	\$65-100/hour
Staff Consultant	\$70-125/hour
Senior Staff Consultant	\$75-150/hour
Project Consultant	\$80-180/hour
Senior Project Consultant	\$90-200/hour
Senior Consultant	\$140-275/hour
Director	\$225-350/hour

Expenses

Communication costs of six percent (6%) of total professional labor billings will be charged in lieu of the actual cost of long distance and cellular telephone costs, pager costs, postage costs, facsimile costs, routine black-and-white copying (less than 500 pages), incidental office supplies, and personal computer usage. Non-routine black-and-white copies will be charged at \$0.25 per page. All in-house

color copies will be charged at \$1.00 per 8.5 x 11 page and \$1.90 per 11 x 17 page. Oversized color copies will be as quoted. Each double-sided color or black-and-white copy will be charged as 2 pages.

Reimbursable Markup (lodging, meals, equipment rental, etc.)	Cost Plus 15%
Subcontractor Markup (*special situations may be at a higher rate)	Cost Plus 15%*
Mileage	\$1.00/mile, portal to portal
Mileage With Trailer	\$1.25/mile, portal to portal

EQUIPMENT	
Tractor	\$225/day
Seed Drill	\$220/day
Misc. Mechanized Equipment	\$100 - \$300/day
GPS Unit	\$150/day
Fish Shock Boat	\$150/day
Power Rake	\$100/day
ATV	\$75/day
Boat/Motor/Trailer	\$80/day
Backpack Fish Shocker	\$80/day
Fire Pumping Equipment	\$80/day
Surveying Equipment	\$50/day
Mower	\$60/day
Field sprayer (25-200 gal)	\$40/day
Gas Power Tools (chainsaw, auger, pump, etc.)	\$30/day/each
Fire Hand-Tools	\$40/person/day
Mist Nets	\$25.00/site/day
Anabat	\$50.00/day/each
Radio Receiver & Antenna	\$100/day
Radio Transmitters	\$175.00 each

3.4. Representation and Opinions. Cardno JFNew represents that all Services provided by its members, employees, agents and representatives are performed in a professional manner in accordance with the skill, care, diligence and sound consulting and engineering practices and procedures as are exercised by a competent consultant and engineer with experience in the administration of services of comparable kind and scope to the Services provided herein or as otherwise required by the express and implicit terms of this Agreement, and practicing in the Chicago metropolitan area ("Professional Standard of Care"). The foregoing representations made by Cardno JFNew and the manner in which Cardno JFNew shall perform the Services is not intended as a "warranty" of performance, but rather is an articulation of the Professional Standard of Care in accordance with which the proper performance of Cardno JFNew's Services under this Agreement shall be determined.

Cardno JFNew shall perform all of its duties hereunder according to the Client's requirements and procedures and in compliance with all applicable federal, state and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The Client shall be the sole judge of whether Cardno JFNew's duties are performed satisfactorily.

Mitigation and ecological restoration have inherent risks. Cardno JFNew does not represent and therefore is not responsible or liable for meeting permit and/or mitigation requirements for reasons beyond its control including, but not limited to, variations in hydrology; invasive species, influences by

nearby construction or excavation; mowing by others; unknown site characteristics; predation by animals, birds or insects; abnormal rainfall rates and/or acts of God.

All regulatory determinations, including, but not limited to, wetland delineations, hydrologic models and mitigation plans associated with permit applications, are subject to review and concurrence by the appropriate state, federal, and/or local governmental agencies. Except as stated in this section, there are no other representations expressed or implied regarding Cardno JFNew's Services.

Notwithstanding anything to the contrary in this Agreement, Cardno JFNew shall provide all Services in accordance with the Professional Standard of Care.

3.5. Access. Client shall arrange for access to and shall make all necessary provisions for Cardno JFNew to enter upon public and private property as required by Cardno JFNew for Cardno JFNew to perform the Services required under this Agreement. Although Cardno JFNew will exercise reasonable care in performing its Services, Client understands that performing some Services may unavoidably cause minor disturbance to the Site, the correction of which is not part of this Agreement. Cardno JFNew shall, however, at its sole cost and expense, correct any major disturbances to Client property if said disturbances are caused by the performance of any Services.

3.6. Insurance. Cardno JFNew shall procure and maintain the following types and amounts during the term of this Agreement.

A. Commercial General and Umbrella Liability Insurance

Cardno JFNew shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 0110 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Client shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Client.

B. Professional Liability Insurance

Cardno JFNew shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each wrongful act arising out of the performance or failure to perform professional services.

C. Business Auto and Umbrella Liability Insurance

Cardno JFNew shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Cardno JFNew shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Client has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Cardno JFNew waives all rights against the Client and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to Cardno JFNew's Services.

E. General Insurance Provisions

(1) Evidence of Insurance

Prior to beginning the Services, Cardno JFNew shall furnish the Client with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to the Client prior to the cancellation or material change of any insurance referred to therein. Written notice to the Client shall be by certified mail, return receipt requested.

Failure of the Client to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Client to identify a deficiency from evidence that is provided shall not be construed as a waiver of Cardno JFNew's obligation to maintain such insurance.

The Client shall have the right, but not the obligation, of prohibiting Cardno JFNew from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Client.

Failure to maintain the required insurance may result in termination of this Agreement at the Client's option.

Cardno JFNew shall provide certified copies of all insurance policies required above within 10 days of the Client's written request for said copies.

(2) Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Client has the right to reject insurance written by an insurer it deems unacceptable.

(3) Cross-Liability Coverage

If Client's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(4) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Client. At the option of the Client, Cardno JFNew may be asked to eliminate such deductibles or self-insured retentions as respects the Client, its officers, officials, employees, volunteers and agents

or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

(5) Subcontractors Cardno JFNew shall cause each subcontractor employed by Cardno JFNew to purchase and maintain insurance of the type specified above. When requested by the Client, Cardno JFNew shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

3.7. Limited Liability. Cardno JFNew shall have the first and primary right to remedy any errors, omissions or defective workmanship at its sole cost and expense. Cardno JFNew is not responsible for errors which result from faulty or incomplete information supplied to Cardno JFNew by Client. Notwithstanding anything to the contrary in this Agreement, Cardno JFNew shall provide all Services in accordance with the Professional Standard of Care.

The Client shall not be liable for acts or omissions of or any of Cardno JFNew's employees, subcontractors, agents, or other persons purporting to act at the direction or request, on behalf, or with the implied actual consent, of Cardno JFNew.

3.8. Indemnification. Cardno JFNew agrees to indemnify and hold harmless Client and all of its officers, directors and employees against claims, losses, penalties, fines, forfeitures, amounts paid in settlement, judgments, (including reasonable attorneys' fees) arising from or in connection with the Services performed by Cardno JFNew, its officers, directors, employees, volunteers and agents under this Agreement, including but not limited to any accident, injury, damage, property loss or theft, except to the extent caused by the willful misconduct of the Client, or arising from or in any way connected with any act, omission, wrongful act or negligence of Cardno JFNew, its officers, director, employees, volunteers and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to the Client. Cardno JFNew shall similarly protect, indemnify and hold and save harmless the Client, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Cardno JFNew's breach of any of its obligations under, or Cardno JFNew's default of, any provision of this Agreement.

It is intended by the parties of this agreement that Cardno JFNew's Services in connection with the project shall not subject Cardno JFNew's individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Cardno JFNew, an Indiana corporation, and not against any of Cardno JFNew's individual employees, officers or directors.

3.9. Force Majeure. Neither party shall be liable to the other for any costs or damages due to causes beyond its control, expressly including but not limited to hydrology, weather conditions or the exercise of eminent domain. Extensions of the performance schedule (if any) shall be deemed to be automatically granted in the case of delays beyond the control of Cardno JFNew.

3.10. Instruments of Service. All plans, drawings, surveys, prints, software, programs, data, specifications, photographs (including aerial) and other related items and documents prepared or furnished by Cardno JFNew pursuant to this Agreement are instruments of service in respect to this Project, and Cardno JFNew shall retain the ownership and property interests therein. Such documents are not intended or represented to be suitable for use by Client or others on extensions of this Project, on any other project, or for completions of this Project should this Agreement be terminated, nor may such documents be so reused without the express written consent of Cardno JFNew. Any reuse or modification of such documents without the consent of Cardno JFNew will be at

Client's sole risk and without liability to Cardno JFNew, and Client shall indemnify and hold Cardno JFNew harmless from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting there from.

3.11. Governing Law: Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

3.12. Client Disclosure and Lawfulness. Client agrees to disclose to Cardno JFNew all pertinent information relative to the project including surveys, data, and instructions, past reports or correspondence and to work within the natural resource laws relative to project activities on which Cardno JFNew is consulting. Cardno JFNew may use such information in performing its Services and is entitled to rely upon the accuracy and completeness thereof. Notwithstanding anything to the contrary in this Agreement, Cardno JFNew shall provide all Services in accordance with the Professional Standard of Care.

3.13. Construction Observation. If Cardno JFNew is not contracted for Construction Observation services associated with design services, it is understood and agreed that such services will be provided for by the Client. The Client assumes all responsibility for interpretation of the Contract Documents and for Construction Observation.

3.14. Jobsite Safety. Cardno JFNew shall be responsible for jobsite safety while performing all Services and any additional services. Cardno JFNew shall take all necessary health and safety precautions in compliance with all laws, rules and regulations and shall promptly remedy any unsafe activities or situations. However, Cardno JFNew has no control or authority to exercise control over any individuals who are not employees of Cardno JFNew.

3.15. Termination.

a. This Agreement may be terminated by either party upon 14 days written notice to the nonterminating party. In the event of termination by the Client pursuant to this Paragraph 3.15(a), Cardno JFNew shall immediately, in accordance with instructions from the Client: (i) cease operations as specified in the notice; and (ii) enter into no further subcontracts for labors, services, facilities or materials, except as necessary to complete continued portion of the Services. In the event of termination by either party pursuant to this Paragraph 3.15(a), Cardno JFNew shall recover payment for the Services properly performed and approved by the Client prior to the effective date of the termination. Cardno JFNew shall not be entitled to lost profits or any damages resulting from termination for convenience under this Paragraph.

b. In the event Vendor defaults in the performance of this Agreement, or otherwise breaches this Agreement in any way, the Client may, in its sole discretion, terminate this Agreement immediately upon written notice to Cardno JFNew. Upon termination due to Cardno JFNew's breach, Cardno JFNew shall pay the Client all reasonable costs incurred by the Client due to said breach, including the cost of obtaining replacement services. In the event of such termination, payment to Cardno JFNew of any sums earned to the date of such termination shall be in full satisfaction of any and all claims by Cardno JFNew against the Client under this Agreement, and acceptance of sums paid to Cardno JFNew shall constitute a waiver of any and all claims that may be asserted by Cardno JFNew against the Client. Cardno JFNew shall not be entitled to lost profits or any damages resulting from termination under this Paragraph 3.15(b). Further, the Client shall not be restricted to any single remedy, but shall instead be entitled to pursue all legal and equitable remedies concurrently. Cardno JFNew agrees that its obligations under this Agreement shall survive the termination of this Agreement.

3.16. Independent Contractor. The relationship between Cardno JFNew and the Client is that of an independent contractor. Cardno JFNew shall supply all personnel, equipment, materials, and supplies at their own expense. Cardno JFNew shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint ventures of the Client. Cardno JFNew is not entitled to workers' compensation benefits or other employee benefits from the Client and is obligated to directly pay federal and state income tax on money earned under this Agreement.

3.17. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Client and/or Cardno JFNew, and/or any of their respective officials, officers and/or employees.

3.18. Compliance with Laws; Licenses and Permits. Cardno JFNew shall comply with all applicable codes, laws, ordinances, policies, procedures and regulations of the Wheaton Park District, the City of Wheaton, DuPage County, the State of Illinois, and the Federal Government, including, but not limited to age, minimum wage, workers compensation, and equal employment, as applicable. Cardno JFNew shall, at its sole cost and obligation, be responsible for obtaining all licenses and permits required to perform its duties under this Agreement.

3.19 No Waiver. The Client's failure at any time or times hereafter to require strict performance by Cardno JFNew of any provision of this Agreement shall not constitute a waiver, or effect or diminish any right of the Client to demand strict compliance and performance therewith. Any suspension or waiver by the Client of a default of any provision of this Agreement shall not suspend, constitute a waiver of or effect any other default by Cardno JFNew under this Agreement, whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements and/or covenants of Client contained in this Agreement and no default by Cardno JFNew under this Agreement shall be deemed to have been waived by the Client unless such waiver is by an instrument in writing signed by the Client specifying such suspension or waiver.

3.20. Assignment. This Agreement is binding upon and inures to the benefit of the respective parties hereto, their legal representatives, successors, and assigns. Neither Cardno JFNew nor the Client may assign, sublet, or transfer its interests in this Agreement without first obtaining the written consent of the other.

3.21. Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services as set forth in this Agreement.

3.22. Authorization. All signatories represent they are duly authorized to execute this Agreement.

3.23. Severability. If any part of this Agreement is declared to be invalid by a court of competent jurisdiction, it shall be severable, and the rest of the parties' obligations under this Agreement shall survive. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

3.24. Notice. All notices under this Agreement shall be in writing, delivered in person by the sending party to the other party signing this Agreement, or by certified or registered mail deposited in an appropriate receptacle of the United States Postal Service, postage fully prepaid, and addressed to the party at the address herein set forth. Mail delivery is deemed to be received on the fourth (4th) day after deposit for mailing.

If to the Client:

Wheaton Park District
102 E Wesley Street
Wheaton, Illinois 60187
Attn: Executive Director

If to Cardno JFNew

Cardno JFNew
6605 Steger Road
Unit A
Monee, Illinois 60449
Attn: Business Unit Manager

3.25. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope of intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

This Agreement represents the entire understanding of parties in respect to projects and can only be modified in writing signed by both parties. This Agreement shall also be valid if signed in counterparts.

Cardno JFNew

By: 

Anngie Richter,
Business Unit Manager, Principal
(Printed Name and Title)

Date: March 22, 2013

Wheaton Park District

By: 

Michael J. Bennett
(Printed Name and Title)

Date: 4/24/13

Cardno JFNew Project# 0807154.04
#365770