

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into October 14, 2022, by and between the Wheaton Park District, 102 E. Wesley St., Wheaton, IL 60187, hereinafter referred to as the "Owner" and CAGE Civil Engineering, 2200 Cabot Dr., #325, Lisle, IL 60532, hereinafter referred to as the "Consultant."

For and in consideration of the promises and mutual covenants set forth herein, the parties hereto agree as follows:

1. SCOPE OF WORK. The Consultant will provide professional engineering services to examine and assess the existing storm drainage system functionality and the second showing the drainage area tributary to the park, and provide a written report to the Owner regarding the same, all as more fully described in the Consultant's September 14, 2022 Proposal (the "Work"). The Consultant's Proposal are incorporated into this Agreement as part of this Agreement provided, however, that in the event of any conflict between this Agreement and the Consultant's Proposal, this Agreement shall control.

2. PAYMENT FOR PROFESSIONAL SERVICES RENDERED. Subject to the limitation set forth herein, Consultant shall be paid not more than twenty thousand nine-hundred thirty-four dollars (\$8,800), which sum includes all fees of Consultant and its subcontractor(s)/subconsultant(s), costs and expenses to complete the Work. No change in scope or cost of the Work will be effective unless a written change order is executed by Owner and Consultant. Within 30 days of submitting its final report, Consultant shall invoice Owner. Owner will make payment in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*). Acceptance of final payment by the Consultant, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment.

3. TERM OF WORK. Consultant shall complete tasks according to the following milestones:
 - a. Draft report and meeting with Owner's staff to be completed by December 31, 2022;
 - b. Final Report with cost estimate to be completed by January 31, 2023.

The foregoing milestone dates may not be extended without Owner's prior written approval.

4. CONFLICT OF INTEREST. Consultant covenants that neither it nor its principal presently has any interest, and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. No official, officer

or employee of the Owner who exercises any functions or responsibilities in the review or approval of the work or services rendered by the Consultant under this Agreement shall participate in any decision relating to this Agreement which affects such individual's personal interest, or the interest of any corporation, partnership or association in which such individual is directly or indirectly interested, or have any interest, directly or indirectly, in this Agreement or the proceeds thereof.

5. INDEMNIFICATION. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs arising out of or resulting from the performance of the Consultant's services, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) arises in whole or in part from any act or omission of the Consultant, Consultant's consultants and subconsultants, anyone directly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. 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 any party or person described in this Paragraph. Consultant shall similarly protect, indemnify, and hold and save harmless the Owner, 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 incurred by reason of Consultant's breach of any of its obligations under, or Consultant's default of, any provision of the Contract. Consultant's obligations under this section shall survive the termination or completion of this Agreement.

6. STANDARD OF CARE. In performing its services hereunder, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality.

7. INSURANCE REQUIREMENTS. Consultant shall meet all insurance requirements as set forth on Exhibit A, which is incorporated as if fully set forth herein.

8. TERMINATION. The Owner may terminate this Agreement for cause upon seven (7) days' written notice if the Consultant refuses or fails to meet any of the milestone dates without Owner's authorized extension of time; fails to make payment to subcontractors, subconsultants or suppliers in accordance with the respective agreements between the Consultant and the subcontractor, subconsultant or suppliers; or otherwise is guilty of substantial breach of a provision of the Contract Documents. In the event Owner terminates the Agreement for cause, Consultant shall be paid for services rendered up until the date of termination provided Consultant has delivered to Owner the work product it has completed up to the date of termination.

The Owner may terminate the Agreement for the Owner's convenience and without cause upon written notice to Consultant. Upon receipt of notice from the Owner of termination for the Owner's convenience, the Consultant shall cease operations as directed by the Owner in the notice; take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and except for Work directed to be performed prior to the effective date of

termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of termination for the Owner's convenience, the Owner shall pay the Consultant for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of subcontracts, and Consultant shall be obligated to provide Owner with its work product up to the date of termination for convenience.

9. PARTIES TO THE AGREEMENT. The services to be performed by the Consultant under this Agreement are intended solely for the benefit of the Owner. Nothing contained herein shall confer any rights upon or create any duties on the part of the Consultant toward any person or persons not a party to this Agreement, including, but not limited to, any contractor, subcontractor or supplier or the agents, officers, employees, insurers or sureties of any of them.

10. STATE OF ILLINOIS LAW APPLIES; ATTORNEY'S FEES. This Agreement is made and delivered in the State of Illinois and shall be construed and enforced in accordance with the laws thereof. Any action arising from any provision herein included shall be adjudicated in the State of Illinois in the Eighteenth Judicial Circuit Court, DuPage County, Illinois. In the event the Owner is required to use the services of an attorney to enforce this Agreement, Consultant shall pay the Owner's reasonable attorney's fees and all expenses and costs incurred by the Owner in enforcing the Agreement or in seeking any remedy for default under or breach of this Agreement.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties, and there are no other agreements other than those expressed herein. The parties hereto agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of draftsmanship or preparation and that this Agreement has been jointly drafted.

12. FAILURE TO EXERCISE. Neither failure nor any delay on the part of the Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise or the exercise of any other right, power or privilege hereunder. The Owner's rights and remedies under this contract are cumulative and not exclusive of any other rights which the Owner may have at law or in equity.

13. SEVERABILITY. If any section, paragraph, clause, phrase or portion of this contract is, for any reason, determined by a court of competent jurisdiction to be invalid and unenforceable, such portion shall be deemed separate, distinct and an independent provision, and the court's determination shall not affect the validity or enforceability of the remaining portions of this contract.

14. COMPLIANCE WITH LEGAL REQUIREMENTS. The Consultant's products, services and facilities shall be in compliance with those federal, state and local health, environmental and safety laws, regulations, standards and ordinances, to the extent applicable to Consultant's Work. Furthermore, Consultant represents to the Owner that Consultant and any subcontractor has obtained any and all certificates required under applicable law for the rendering of said services and products and shall indemnify and hold the Owner

harmless for any liability (including reasonable attorney's fees) incurred by the Owner should Consultant not be so certified.

15. LIENS. Consultant shall not permit any mechanic's lien to stand against Owner's property or funds for any work, labor or materials in connection with work of any character performed on Owner's property at the direction of Consultant. In the event of any such lien attaching to Owner's property or funds as a result of Consultant's work, Consultant shall immediately have such lien either released, or if contested by Consultant, bonded over in the amount of one hundred percent (100%) of the claim and defend Owner's interests against such lien.

16. SAFETY OF PERSONS AND PROPERTY. The Consultant shall determine the means and methods of carrying out its Work, and shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to its employees engaged in the Work, Owner's employees and patrons and other persons who may be affected thereby, including the public on at the location of the Work. In addition to Consultant's obligations under this section, Consultant shall promptly remedy any damage or loss to Owner's property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Consultant is responsible, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by Owner, or by anyone for whose acts Owner may be liable, and not attributable to the fault or negligence of the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and in the year first above written.

CAGE CIVIL ENGINEERING

WHEATON PARK DISTRICT



Greg J. Horejs, P.E., President



Michael Benard, Executive Director

EXHIBIT A

Insurance Requirements

The Consultant shall maintain the following insurance for the duration of the Agreement. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1. General Liability: Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for 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 01 10 93, or a substitute form providing similar 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). Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing similar 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 Owner. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

2. Automobile Liability: Consultant shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for 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.

3. Workers' Compensation: Consultant shall maintain workers compensation as required by statute and employer's liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$500,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Consultant waives all rights of subrogation against Owner and its officers, officials, employees, volunteers, and agents for recovery of damages arising out of or incident to the Consultant's work.

4. Professional Liability: Consultant shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each wrongful act arising out of the performance or failure to perform professional services and \$2,000,000 aggregate.

General Insurance Provisions

1. Evidence of Insurance: Prior to beginning work, Consultant shall furnish Owner 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 Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement, or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Consultant from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. Consultant shall provide certified copies of all insurance policies required above within 10 days of Owners' 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 Owner has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage: If Consultant's liability policies, except Professional Liability, 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 Owner.

5. Subcontractors: Consultant shall cause each subcontractor employed by Consultant to purchase and maintain insurance of the type specified above. When requested by the Owner, Consultant shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.