

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into January 22, 2025, 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 generate an on-site Topographic Survey of Triangle Park, and review the Wheaton Park District's prepared documents to determine if the proposed basketball court improvement design meets applicable City of Wheaton and DuPage County regulations for stormwater management. The Consultant will also include guidance and support from an engineer to gain permitted approval, as stated in the Consultant's January 15, 2025, 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 seven thousand nine hundred dollars (\$7,900), 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 IL CS 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. The consultant shall complete tasks according to the following milestones:
 - a. Topographic Survey to be completed by March 7, 2025;
 - b. Engineering Review & Coordination of Submittal to City of Wheaton completed by May 16, 2025

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 of 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 fees 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 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 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. Likewise, to the fullest extent permitted by law, the client shall indemnify and hold harmless the consultant, its agents, employees, and its consultants from and against all claims, damages, losses, and expenses, including but not limited to attorney fees arising out of or resulting from the performance of the Consultant's services that results in negligence or the negligence of its agents.
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 B, which are 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 the Owner's authorized extension of time and/or 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 terminated the Agreement for cause, Consultant shall be paid for all services as they agreed to up until the date of termination, including all the completed work the Consultant provided to the Owner.
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. On the part of the Consultant towards any person or persons who are not a party to this Agreement (included but not limited to any contractor, subcontractor, or supplier or the agents, officers, employees, insurers or sureties of any of them), nothing contained herein shall confer any rights upon or create any duties.
10. STATE OF ILLINOIS LAW APPLIES; ATTORNEY 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.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties, and there are no other agreements other than those expresses herein. The parties hereto agree that this Agreement has been jointly drafted and shall not be construed against either party.
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 then be held and directly addressed focusing solely on the facts. 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 the 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. Should Consultant not be certified, Consultant shall indemnify and hold the Owner harmless for any liability (including reasonable attorney's fees) incurred by the Owner.
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 results 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 a case where there's any damage to loss to Owner's property caused in whole or in part by the Contractor, a subcontractor, a subcontractor, or anyone directly or indirectly employed by anyone for whose acts may be liable, Consultant shall promptly remedy the damage or loss.


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

CAGE CIVIL ENGINEERING



Greg J. Horejs, P.E., President

WHEATON PARK DISTRICT



Micheal Benard, Executive Director



January 15, 2025

Mr. Steve Hinchee
Wheaton Park District
1000 Manchester Rd.
Wheaton, IL 60187

**PROPOSAL FOR ENGINEERING SERVICES
TRIANGLE PARK BASKETBALL COURT
WHEATON, ILLINOIS**

Dear Mr. Hinchee,

We appreciate the opportunity to submit a proposal to provide civil engineering services to Wheaton Park District (Client), owner of the subject property. We understand that the park district would like to make improvements to Triangle Park's Basketball Court. This proposal offers services to analyze the on-going issues and offer options to remediate said issues. CAGE Engineering, Inc. (CAGE) offers to provide the following services for fees as detailed below:

SCOPE OF SERVICES

A. TOPOGRAPHIC SURVEY

On-Site Topographic Survey of the \pm 1.0 acre property and adjacent land within 50' of the property. This survey would include: a 50' x 50' grid and sufficient spot elevations to generate contours at one-foot intervals; tree locations; locations of existing structures; and locations and elevations of manholes, inverts and visible above-ground utility structures as required for civil engineering design purposes. This work does not include preparation of a Boundary Survey and boundary lines would not be shown.

B. ENGINEERING REVIEW & COORDINATION OF SUBMITTAL TO CITY OF WHEATON

Review documents prepared by Wheaton Park District, related to the basketball court improvements at Triangle Park, to determine if the proposed design meets applicable City of Wheaton and DuPage County regulations for stormwater management. This review will include guidance and support from an engineer, as necessary to obtain permitted approval. If it is deemed the information prepared by WPD is inadequate, CAGE can assist on a T&M basis to supplement as needed.

CLIENT RESPONSIBILITIES

The client will be responsible for providing the following:

1. Legal, accounting and insurance counseling services that may be necessary.
2. Access to the site if necessary.
3. Any hard copy drawings, surveys, reports, and electronic drawings available for the subject property.



COMPENSATION

We will provide the Scope of Services for this project per the following breakdown:

Description	Fee	Fee Type
A. Topographic Survey	\$3,400	Lump Sum
B. Engineering Review & Coordination of Submittal to City of Wheaton	(\$4,500)	T&M (Budget Not to Exceed)
Total Budget	\$7,900	Lump Sum

The attached "General Conditions", which Client hereby acknowledges receiving, are incorporated and made a part of this Proposal. If the above is acceptable, please have this Proposal executed. We will begin work as soon as we receive an executed copy of this Proposal. Thank you again for the opportunity to submit this Proposal. Should you have any questions, please do not hesitate to contact us.

Yours truly,
CAGE ENGINEERING, INC.

Greg J. Horejs, P.E.
President

John Nowak, P.E.
Project Manager

The undersigned is the (a) _____ actual owner of record of the property; (b) _____ authorized agent of the owner of the property; (c) _____ contract purchaser of the Property; (d) _____ general contractor (e) _____ uncertain.

If (b), (c), (d) or (e) is checked, the property owner's name and address is _____.

ACCEPTED: **WHEATON PARK DISTRICT**

By:

(Authorized Representative)

M. Benner

(Printed Name)

Title:

Exec. Dir.

Date:

1/31/2025

GENERAL CONDITIONS

REFERENCE CONDITIONS CAGE Engineering, Inc., will hereinafter be referred to as CAGE, and the Client listed in proposal above will be referred to as CLIENT. CAGE is defined as including its subsidiaries, affiliates, contractors, subcontractors and agents, including their respective officers, directors, employees, successors and assigns.

ONE INSTRUMENT/PRECEDENCE These GENERAL CONDITIONS, and the PROPOSAL to which these conditions are attached shall be deemed one instrument, and collectively known as the "Agreement". Wherever there is a conflict or inconsistency between the provisions of these GENERAL CONDITIONS, the PROPOSAL, and any plans or specifications, as applicable, the provisions provided for in these GENERAL CONDITIONS shall, in all instances, take precedence and prevail. These GENERAL CONDITIONS shall apply to the work provided in the PROPOSAL to which this is attached or an amendment or modification, including an agreement for additional services.

ENTIRE AGREEMENT These GENERAL CONDITIONS, the PROPOSAL, and any plans or specifications represent the entire Agreement between the Parties and supersedes any and all prior oral or written communications, understandings or agreements between the Parties. Amendments to these GENERAL CONDITIONS must be in writing and signed by both CLIENT and CAGE.

DISPUTE RESOLUTION In an effort to resolve any conflicts that arise during the performance of professional services for the project, or following completion of the project, CLIENT and CAGE agree that all disputes between them relating to the Agreement shall first be negotiated between senior officers of CLIENT and CAGE for up to 30 days prior to being submitted to mediation. The costs of the mediator shall be split evenly between CLIENT and CAGE. CLIENT and CAGE shall include a similar mediation provision in all of their respective agreements with other parties regarding the Project and will require all such other persons or entities to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers and fabricators. Such mediation shall be a condition precedent to a party filing any judicial or other proceeding against the other, except with regard to delinquent fees owed to CAGE. In the event that mediation is not successful, either CLIENT or CAGE may seek resolution in state or federal court that has the required jurisdiction within 180 days of the conclusion of mediation.

STATUTES OF REPOSE and LIMITATION All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion, which shall be defined as submittal of completed Final Engineering for permit. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date CAGE's services are completed or terminated.

MODIFICATION TO THE AGREEMENT CLIENT or CAGE may request modifications or changes in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the approved fees, shall be incorporated in this Agreement by a written amendment to the Agreement.

ASSIGNMENT Neither party to this Agreement shall transfer or assign any rights under or interest in this Agreement, including but not limited to monies that are due or monies that may become due, without the written consent of the other party.

SEVERABILITY If any term or provision of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, such holding shall be applied only to the provision so held, and the remainder of this Agreement shall remain in full force and effect.

BREACH Intentionally deleted.

WAIVER No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, condition, or provision hereof shall constitute a waiver of any subsequent breach, default, or violation of the same or any other term, warranty, representation, agreement, covenant, condition, or provision hereof.

FEE SCHEDULE Where lump sum fees have been agreed to between the parties, they shall be so designated in the Agreement attached hereto and by reference made part hereof. Where fees are based on hourly charges for services and costs incurred by CAGE, they shall be based upon the hourly fee scheduled adopted annually by CAGE, as more fully set forth in the "Time and Material Rate Schedule" attached hereto and by reference made part hereof.

INVOICES Charges for services will be billed at least as frequently as monthly, and at the completion of the project. CLIENT shall compensate CAGE for any sales or value added taxes which apply to the services rendered under this Agreement or any amendment thereto. CLIENT shall reimburse CAGE for the amount of such taxes in addition to the compensation due for services. Payment of invoices shall not be subject to any discounts or deductions by CLIENT unless agreed to in writing by CAGE. Invoices are considered delinquent if payment has not been received within 30 days from the date of invoice. There will be an additional charge of 2 percent per month compounded on amounts outstanding more than 30 days.

REIMBURABLES CLIENT shall reimburse CAGE for all expenses related to the project, including prints/copies, supplies, travel charges, conferencing services and other costs directly incidental to the performance of the contract services. Reimbursement of expenses shall include actual costs plus 10%.

CHANGES IN REGULATORY ENVIRONMENT The services provided by CAGE under this Agreement were determined based upon the applicable municipal, county, state and/or federal regulations, codes, laws and requirements that were in existence on the date of this Agreement. Any material additions, deletions or changes in the regulatory environment, which require an increase in the scope of services to be performed, will be an Additional Service.

GOVERNING LAW This Agreement shall be governed by and interpreted pursuant to the laws of the State of Illinois.

CURE PERIOD If during the project term, CLIENT observes or becomes aware of any improper service which has been provided by CAGE, Client agrees to immediately notify CAGE of the same, in writing. CAGE shall then have five working days to cure, or begin to cure in a diligent manner, such improper service before CLIENT may exercise its rights under any default and remedy provision provided for in this

Agreement, including the right to take corrective action prior to the termination of the cure period. If CLIENT fails to notify CAGE of any defects within thirty (30) working days of learning of the defects, any objections to CAGE's work shall be waived. CAGE is not responsible for any backcharges unless CLIENT has complied with the foregoing and allowed CAGE the opportunity to cure any problem.

FORCE MAJEURE Obligations of either party under this Agreement shall be suspended, and such party shall not be liable for damages or other remedies while such party is prevented from complying herewith, in whole or part, due to contingencies beyond its reasonable control, including, but not limited to strikes, riots, war, fire, acts of God, injunction, compliance with any law, regulation, or order, whether valid or invalid, of the United States of America or any other governmental body, whether now existing or hereafter created, inability to secure materials or obtain necessary permits, provided, however, the party so prevented from complying with its obligations hereunder shall promptly notify the other party thereof.

STANDARD OF CARE Services performed by CAGE under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

INDEMNITY To the fullest extent permitted by law, the CLIENT shall waive any right of contribution and shall indemnify and hold harmless CAGE, its agents, employees and consultants from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from or in connection with the performance of the work which results from CLIENT's negligence or the negligence of CLIENT's agents. This indemnity shall not require the CLIENT to indemnify CAGE for the negligent acts of CAGE or its agents.

To the fullest extent permitted by law, the CAGE shall waive any right of contribution and shall indemnify and hold harmless CLIENT, its agents, employees and consultants from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from or in connection with the performance of the work which results from CAGE's negligence or the negligence of CAGE's agents. This indemnity shall not require the CAGE to indemnify CLIENT for the negligent acts of CLIENT or its agents.

INSURANCE and LIMITATION CAGE is covered by commercial general liability insurance, automobile liability insurance and workers compensation insurance with limits which CAGE considers reasonable. Certificates of all insurance shall be provided to CLIENT upon request in writing. Within the limits and conditions of such insurance, CAGE agrees to indemnify and hold CLIENT harmless from any loss, damage or liability arising directly from any negligent act by CAGE. CAGE shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance. CAGE shall not be responsible for any loss, damage or liability arising from any act by CLIENT, its agents, staff, other consultants, independent contractors, third parties or others working on the project over which CAGE has no supervision or control. Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties agree that CAGE has no duty to defend CLIENT from and against any claims, causes of action or proceedings of any kind. Before work is commenced on the site, and throughout the duration of the project, CLIENT shall maintain insurance coverage so as to indemnify CAGE from all claims of bodily injury or property damage that may occur from CLIENT's negligence.

LIMITATION OF CAGE'S LIABILITY In recognition of the relative risks and benefits of the Project to both the CLIENT and CAGE, the risks have been allocated such that the CLIENT agrees that for the compensation herein provided CAGE cannot expose itself to damages disproportionate to the nature and scope of CAGE's services or the compensation payable to it hereunder. Therefore, to the maximum extent permitted by law, CLIENT agrees that the liability of CAGE to CLIENT for any and all causes of action, including, without limitation, contribution, asserted by CLIENT and arising out of or related to the negligent acts, errors or omissions of CAGE in performing professional services shall be limited to one hundred thousand dollars (\$100,000) or the total fees paid to CAGE by CLIENT under this Agreement, whichever is greater ("Limitation"). CLIENT hereby waives and releases (i) all present and future claims against CAGE, other than those described in the previous sentence, and (ii) any liability of CAGE in excess of the Limitation. In consideration of the promises contained herein and for other separate, valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLIENT acknowledges and agrees that (i) if not for the Limitation, CAGE would not have performed the services, (ii) it has had the opportunity to negotiate the terms of the Limitation, (iii) the Limitation amount may differ from the amount of Professional liability insurance required of CAGE under this Agreement, (iv) the Limitation is merely a Limitation of , and not exculpation from, CAGE's liability and does not in any way obligate CLIENT to defend, indemnify or hold harmless CAGE, (v) the Limitation is an agreed remedy, and (vi) the Limitation amount is neither nominal nor a disincentive to CAGE performing the services in accordance with the Standard of Care.

CONSEQUENTIAL DAMAGES Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CAGE, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for incidental, indirect, or consequential damages arising out of or connected in any way to the project or the Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict and implied warranty. Both CLIENT and CAGE shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the project.

RELIANCE ON INFORMATION PROVIDED CAGE may rely on the accuracy and completeness of any information furnished to CAGE by or on CLIENT's behalf. Furthermore, CLIENT agrees to hold CAGE harmless from any engineering errors resulting from inaccurate site information which is provided by CLIENT. CLIENT's agreement to hold CAGE harmless specifically includes topographic surveys which have been prepared by other consultants, whereby CAGE must rely on the accuracy of grades, as well as location of existing structures and utilities.

PERSONAL LIABILITY It is intended by the parties to this Agreement that CAGE's services in connection with the project shall not subject CAGE'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, CLIENT agrees that as CLIENT'S sole and exclusive remedy, any claim, demand, or suit shall be directed and/or asserted only against CAGE, and not against any of CAGE's individual employees, officers, or directors. CAGE agrees that as CAGE'S sole and exclusive remedy, any claim, demand, or suit shall be directed and/or asserted only against CLIENT, and not against any of CLIENT's individual employees, officers, or directors.

PERMITS AND FEES Unless the Proposal specifically provides otherwise, CLIENT shall be responsible for paying all application and permit fees and obtaining all permits. CAGE does not warrant, represent or guarantee that the permits or approvals will be issued.

RIGHTS-OF-WAY & EASEMENTS CLIENT shall be responsible for obtaining (or vacating) all right-of-way, easements, real covenants and/or agreements necessary for the proper development of the property, including but not limited to right-of-way and easements which may be necessary for roadway and access improvements; stormwater conveyance and detention; sanitary sewer collection, pumping and treatment facilities; water distribution, treatment or storage facilities; and temporary construction access.

TERMINATION This Contract shall terminate at the time CAGE has completed its services for CLIENT, or prior to that time, if one party provides to the other party written notice, whereby such termination date shall be effective seven (7) days after receipt of such notice. CLIENT agrees to pay for all services, expenses and charges, as agreed, which have been incurred by CAGE through the date of termination.

THIRD PARTY BENEFICIARIES Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or CAGE. CAGE's services under this Agreement are being performed solely for CLIENT's benefit, and no other party or entity shall have any claim against CAGE because of this Agreement, or the performance or nonperformance of services hereunder. Neither CAGE nor CLIENT shall have any obligation to indemnify each other from third party claims. CLIENT and CAGE agree to require a similar provision in all contracts with Construction Contractors, Construction Subcontractors, vendors, and other entities involved in project to carry out the intent of this provision.

REUSE OF DOCUMENTS All documents including reports, drawings, specifications, exhibits, and electronic media furnished by CAGE and/or any subcontractor pursuant to this Agreement are instruments of its services. They are not intended or represented to be suitable for reuse by CLIENT or others on extensions of this project or on any other project. Any reuse without specific written authorization by CAGE is prohibited and is at CLIENT's risk, without liability to CAGE. CLIENT shall indemnify and hold harmless CAGE and/or any subcontractor from all claims, damages, losses and expenses including court costs and attorney's fees arising out of or resulting therefrom.

SUBCONTRACTING CAGE shall have the right to subcontract any part of the services and duties hereunder without the consent of CLIENT.

JOB SITE VISITS CLIENT agrees that services performed by CAGE and/or any subcontractor during construction will be limited to providing assistance in quality control and to deal with questions by the CLIENT's representative concerning conformance with contract documents. This activity is not to be interpreted as an inspection service, a construction supervision service, or guaranteeing the Construction Contractor's or Construction Subcontractor's performance. CAGE and/or any subcontractor will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs. CAGE and/or any subcontractor will not be responsible for Construction Contractor or Construction Subcontractor's obligation to carry out the work according to the contract documents. CAGE and/or any subcontractor will not be considered an agent of the owner and will not have authority to direct Construction Contractor or Construction Subcontractor's work or to stop work.

ENGINEER'S OPINION OF PROBABLE COST Since CAGE has no control over the cost of labor, materials or equipment, or over a contractor's method of determining prices, or over competitive bidding or market conditions, CAGE's opinions of probable project cost or construction cost for the project will be based solely upon its own experience with construction, but CAGE cannot and does not guarantee that proposals, bids, or the construction cost will not vary from its opinions of probable cost. If CLIENT wishes greater assurance as to the construction cost, CLIENT shall employ an independent cost estimator.

SHOP DRAWING REVIEW CLIENT agrees that CAGE and/or any subcontractor shall review shop drawings and/or submittals solely for their general conformance with CAGE's design concept and contract documents. CAGE and/or any subcontractor shall not be responsible for any aspects of a shop drawing or submittal that affect or are affected by the means, methods, techniques, sequences, and procedures of construction, safety precautions and programs incidental thereto, all of which are the Construction Contractor's or Construction Subcontractor's responsibility. The Construction Contractor/Subcontractor will be responsible for dimensions, lengths, elevations and quantities, which are to be confirmed and correlated at the jobsite, and for coordination of the work with that of all other trades. CLIENT warrants that the Construction Contractor/Subcontractor shall be made aware of the responsibility to review shop drawings and/or submittals and approve them in these respects before submitting them to CAGE.

RECORD DRAWINGS If CAGE is to prepare record drawings as required by the Proposal, then the information submitted by the Contractor and incorporated by CAGE into the record documents will be assumed to be reliable, and CAGE will not be responsible for the accuracy of this information, nor for any errors in or omissions in the information provided by the Contractor which may appear in the record documents as a result, and CLIENT will hold CAGE harmless for any such errors or omissions.

RIGHT OF ENTRY CLIENT shall provide for CAGE's and/or any subcontractor's right to enter property owned by CLIENT and/or others in order for CAGE to fulfill the scope of services for the project. CLIENT understands that use of exploration equipment may unavoidably cause some damage, the correction of which is not part of this agreement.

TIME AND MATERIAL RATES

Principal	\$230.00
Senior Manager	\$195.00
Project Manager	\$180.00
Construction Manager	\$170.00
Project Engineer	\$140.00
Civil Engineer	\$120.00
Engineering CADD Technician	\$110.00
Project Assistant	\$80.00
2-Man Field Crew	\$230.00
Survey Manager	\$190.00
Project Surveyor	\$140.00
Instrument Person	\$90.00

EXCLUSIONS (AVAILABLE AS ADDITIONAL SERVICES):

I. ALL ENVIRONMENTAL SERVICES

II. ALL WETLANDS SERVICES

III. ALL SURVEYING SERVICES

- A. Preparation of legal descriptions and/or exhibits for additional easements or easement vacations other than those shown on the Final Plat.
- B. Certification for zoning compliance.
- C. Preparation or negotiation for off-site easements.
- D. Consultation with the Client, the title company or the Client's attorney with regards to the resolution of gaps and/or overlaps.

IV. ENGINEERING SERVICES NOT INCLUDED

- A. Preparation of engineering design and plans (i.e. Schematic Design phase through Construction Administration phase)
- B. Preparation of detailed floodplain and/or floodway studies of any stream or drainage system to determine base flood elevations and stream flows and velocities.
- C. All work in connection with obtaining a permit from Illinois Department of Transportation, including plan preparation, drainage calculations and dam safety permits.
- D. Completion of a downstream sanitary or storm system study.
- E. Analysis or study of municipal water system (including pressure and flow).
- F. Stormwater Management modeling and DuPage County Tabbed Submittal report preparation.

EXHIBIT B
INSURANCE AND INDEMNIFICATION REQUIREMENTS

I. Insurance

A. Commercial General and Umbrella Liability Insurance

Contractor 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 01 10 93, or at Owner's sole option on a more current ISO form or a substitute form providing at least 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).

Owner shall be included as an insured under the CGL, using ISO additional insured endorsement **CG 20 10 12/19 and CG 2037 12/19** or a substitute providing at least 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 Owner. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

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.

B. Business Auto and Umbrella Liability Insurance

Contractor 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 at least equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage at least equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute 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 Owner has not been included as an insured under the CGL using ISO additional insured

endorsement **CG 20 10 12/19** and **CG 2037 12/19** or a substitute endorsement acceptable to Owner under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's and Architect's **work**.

D. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, and such other evidence of insurance as shall be requested by Owner, 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 Contractor's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the Contract 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 Agreement at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner'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 Owner has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-liability Coverage

If Contractor'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 Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as

respects the Owner, 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

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

I. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Park District 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 Contractor's obligations pursuant to this Agreement, 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, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission, by the Contractor, any subcontractor, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. 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. Contractor shall similarly protect, indemnify and hold and save harmless the Park District's 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 breach of any of their obligations under, or default of, any provision of the Agreement.

The Work of this Project is subject to the Illinois *Prevailing Wage Act*, 820 ILCS 130/0.01 *et seq.* A prevailing wage determination has been made by the Park District, which is the same as that determined by the Illinois Department of Labor for public works projects in DuPage County. The Contract entered into for the Work will be drawn in compliance with said law and proposals should be prepared accordingly and provide for payment of all laborers, workmen, and mechanics needed to perform the Work at no less than the prevailing rate of wages (or the prevailing rate for legal holiday and overtime work) for each craft, type of worker, or mechanic.

IMPORTANT NOTICE OF RESPONSIBILITY FOR PERIODIC REVISIONS TO PREVAILING WAGE RATES

Revisions of the following Prevailing Wage Rates are made periodically by the Illinois Department of Labor. These may be accessed by computer at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. As required by the Prevailing Wage Act, any and all such revisions supersede the Park District's June determination. Bidders and contractors performing work on this Project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of the Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. In consideration for the award to it of the contract for this Project, the contractor agrees that the foregoing notice satisfies any obligation of the public body in charge of this Project to notify the contractor of periodic changes in the prevailing wage rates and the contractor agrees to assume and be solely responsible for, as a material

obligation of the contractor under the contract, the obligation to determine periodic revisions of the prevailing wage rates, to notify its subcontractors of such revisions, to post such revisions as required for the posting of wage rates under the Act, and to pay and require its subcontractors to pay wages in accordance with such revised rates.

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EXHIBIT C
CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Park District and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by the Park District.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; and 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds.
- C. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Park District, immediately in writing, if it occurs prior to entering into the Contract therewith.
- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. (i) Contractor's proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Park District has any direct or indirect financial interest in Contractor's bid proposal or in Contractor; (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Park District and the Park District's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Park District and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- I. Contractor knows and understands the Equal Employment Opportunity Clause administered by the Illinois

Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

- K. Contractor is not barred from contracting with the Park District because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Park District, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- L. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- M. Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 *et. seq.*) and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

CONTRACTOR

By: _____
Its: _____

STATE OF _____)ss
COUNTY OF _____

I the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that _____ appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: _____

(Notary Public)

(SEAL)