



October 18, 2019

Steve Hinchee, Superintendent of Planning
Wheaton Park District
102 E. Wesley St.
Wheaton, IL 60187

**AGREEMENT FOR CIVIL ENGINEERING SERVICES
LINCOLN MARSH OFFICE BUILDING ACCESS ROAD
WHEATON, ILLINOIS**

Dear Mr. Hinchee:

Thank you for the opportunity to submit a proposal for civil engineering services. It is our understanding that Wheaton Park District will be making improvements to the access road at the Lincoln Marsh. We have prepared this proposal which includes a comprehensive list of services required in order to navigate the site development process through Wheaton, IL and DuPage County. The services and associated fees are outlined as follows:

SCOPE OF SERVICES

1. INVESTIGATE & DOCUMENT EXISTING CONDITIONS

- a. Topographic Survey
- b. Wetland Assessment & Delineation
 - i. Identify wetland boundaries, mark with pin stakes, and take sample points to assess the vegetation and soils hydrology.
 - ii. Prepare a report that summarizes the wetland determination findings, including completion of USACE Data Forms, Exhibits, and Site Photos.
- c. Soil Borings
 - i. 3 augers to a depth of 5 feet below ground surface
 - ii. Lab testing
 - iii. Summary Report

2. FINAL DESIGN & CONSTRUCTION DOCUMENT PREPARATION

- a. Develop 100% Construction Plans.
- b. Prepare Floodplain cut/fill calculations for documentation with DuPage County.
**Based on conversations with the County, these improvements would fall under General Certification No. 8 as long as the concrete driveway is constructed at the same dimensions and elevation as the existing gravel access drive. It is assumed that this is the design we are proceeding with and Floodplain Cut/Fill calculations will not be required by the County.*



3. PERMITTING COORDINATION

- a. City of Wheaton
- b. DuPage County

4. BIDDING ASSISTANCE

- a. Park district staff will develop front end specifications, advertise bid & distribute plans.
- b. Prepare answers to technical questions concerning plans that will be issued as part of an addendum sent by park district staff.
- c. Prepare revisions to plans and specifications that will be issued as part of an addendum sent by park district staff.
- d. Assist with review of bid proposals.

5. CONSTRUCTION ASSISTANCE

- a. Review submittals.
- b. Construction observation at critical project milestones.
- c. Respond to contractor questions concerning plans & specification.
- d. Review change orders & provide recommendation.
- e. Review pay requests.

6. AS-BUILT SURVEY

- a. Prepare as-built survey & submit to permitting body.

9. MEETINGS

Attendance at Client meetings, governmental staff meetings or public hearings, including Exhibits.

10. REIMBURSABLES

Reimbursables shall include outside consultant's fees, reproduction costs, messenger or special mail service, or other project-related expenses.



FEE SUMMARY - LINCOLN MARSH		FEE SCHEDULE
SCOPE OF SERVICES		
1. Investigate and Document Existing Conditions		
a. Topographic Survey		\$2,300
b. Wetland Assessment & Delineation Report		\$3,100
c. Soil Borings & Report		\$2,900
2. Final Design & Construction Document Preparation		
a. 100% CD's		\$5,000
b. Floodplain Cut & Fill Calculations *		*
3. Permitting Coordination		
a. City of Wheaton		\$1,500
b. DuPage County		\$1,500
4. Bidding Assistance		\$1,000
5. Construction Assistance		\$1,000
6. As-Built Survey		\$1,500
7. Meetings		Time & Material
8. Reimbursables		Time & Material
TOTAL FEES		\$19,800

* Based on the DuPage County Regulatory Flood Maps, the existing gravel driveway is located within the regulatory flood plain. Based on conversations with the County, these improvements would fall under General Certification No. 8 as long as the concrete driveway is constructed at the same dimensions and elevation as the existing gravel access drive. It is assumed that this is the design we are proceeding with and Floodplain Cut/Fill calculations will not be required by the County. In the event that design parameters or circumstances change and cut/fill calculations are required by DuPage County, we would provide an additional services proposal for this service.



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 and electronic drawings available for the subject property.
 4. Payment for any permit fees, municipal review fees, or any other development fees.
- We have included "Exhibit A", which details services excluded from the scope of this Proposal. If you would like to add any of the listed additional services, please notify us and we will revise this Proposal accordingly.

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 Horejs, P.E.
President

Osvaldo Pastrana, P.E.
Senior 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 102 E. Wesley ST
Wheaton IL 60187

ACCEPTED: **WHEATON PARK DISTRICT**

By:

(Authorized Representative)

Michael Benard

(Printed Name)

Title:

Executive Director

Date:

Nov. 22, 2019

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. 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 In the event CLIENT breaches the terms of this Agreement, CAGE shall be entitled, in addition to the specific remedies provided for in this Agreement, to pursue all remedies available at law or in equity. CLIENT further agrees that CAGE shall be entitled to recover all costs incurred in enforcing any provision of this Agreement, including court costs and reasonable attorney's fees.

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. All time spent and expenses incurred (including attorney's fees) in connection with collection of any delinquent amount will be paid by CLIENT to CAGE per CAGE's then current "Time and Material Rate Schedule".

REIMBURSABLES 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 15%.

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, 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 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 twenty thousand dollars (\$20,000) 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.

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.

**EXHIBIT A
TIME AND MATERIAL RATES**

<u>POSITION</u>	<u>HOURLY RATES</u>
Principal	\$180.00
Senior Manager	\$170.00
Project Manager	\$155.00
Project Engineer	\$125.00
Civil Engineer	\$105.00
Engineering CADD Technician	\$80.00
Project Assistant	\$75.00

EXCLUSIONS (AVAILABLE AS ADDITIONAL SERVICES):

I. ALL ENVIRONMENTAL SERVICES

II. ALL WETLANDS SERVICES

III. ALL TRAFFIC SERVICES

IV. ALL TOPOGRAPHICAL SURVEYING SERVICES

V. ALL SURVEYING SERVICES

VI. ENGINEERING SERVICES NOT INCLUDED

- A. Preparation of engineering design and plans for any off-site utility or highway entrance improvements, including but not limited to pavement widening, sidewalks and street lighting.
- B. Base Flood Elevation (BFE) calculations.
- C. Design or plan preparation of retaining walls.
- D. Preparation of detailed floodplain and/or floodway studies of any stream or drainage system to determine base flood elevations and stream flows and velocities.
- E. Work in connection with preparation of plans, application and field surveys required to obtain a Federal Emergency Management Agency Letter of Map Revision.
- F. All work in connection with obtaining a permit from the Illinois Department of Transportation, including plan preparation, drainage calculations and dam safety permits.
- G. Completion of a downstream sanitary or storm system study.
- H. Analysis or study of municipal water system (including pressure and flow).