

Sent via email to shinchee@wheatonparks.org

February 15, 2024

Mr. Steve Hinchee
Superintendent of Planning
Wheaton Park District
1000 Manchester Road
Wheaton, IL 60187

SUBJECT: Letter Proposal for Professional Civil Engineering Services
Central Athletic Complex Parking Lots Improvements (500 S. Naperville Road)

Dear Mr. Hinchee:

Engineering Resource Associates, Inc. (ERA) is pleased to submit this proposal for site civil engineering and permitting assistance services for the rehabilitation of the existing parking lots and stairway improvements. The site is located at 500 S. Naperville Road, Wheaton, Illinois, west of Naperville Road, at the intersection of Indiana Street. The proposal is based upon your request for proposal, our knowledge of the project and our experience on similar projects.

PROJECT UNDERSTANDING

Wheaton Park District (District) desires to resurface the main parking lot and the two parking lots identified as Alternate 1 and Alternate 2 as indicated on the District's exhibit labeled "Exhibit 1 Central Athletic Complex Parking Lots" (See attached Exhibit 1). Each of the parking lots will be evaluated for the cost and benefits of utilizing permeable pavers vs. asphalt. Once this information is reviewed by the District a decision will be made to provide directions to ERA for final design and engineering.

In addition, the District requested a review of the parking lot configuration in order to maximize the number of spaces. Alternate 1 parking lot will be assessed for reconfiguration to provide additional parking spaces and efficient traffic flow. ERA will provide concepts for the District's review and final acceptance. ERA will meet with the District at this stage to confirm the District's direction for the proposed layout and scope of work for each parking lot. Once approved, a summary of the layout and the scope of work will be submitted to the District and will be the basis for the construction documents.

The sidewalks located adjacent to the existing parking lots will be evaluated and replaced if necessary. The stairs in the northwest corner of the main parking lot will be evaluated for current accessibility standards. Attention to construction staging will be incorporated into the engineering plans to minimize impacts to the facilities' programs. Once the preliminary layout is approved, the engineering plans will be prepared for bidding and construction.

SCOPE OF SERVICES

ERA will provide civil engineering services for the project in accordance with the following work plan:

1. *Meetings/Coordination/Project Administration* - ERA will meet up to four times with the District to discuss the project:
 - 1.1 *Project kick-off meeting*

WARRENVILLE

3S701 West Avenue, Ste 150
Warrenville, IL 60555
☎ (630) 393-3060

CHICAGO

10 S. Riverside Plaza, Ste 875
Chicago, IL 60606
☎ (312) 474-7841

CHAMPAIGN

2416 Galen Drive
Champaign, IL 61821
☎ (217) 351-6268

MILWAUKEE

342 N. Water Street, Ste 600
Milwaukee, WI 53202
☎ (414) 238-9189

- 1.2 *Project layout review meeting*
- 1.3 *75% Progress review meeting*
- 1.4 *95% Progress review meeting*

ERA will coordinate with the City of Wheaton (City) staff and utility companies to review/discuss relevant issues and identify requirements for the project.

ERA will internally administer the project between departments, coordinate schedules, perform QA/QC reviews, and provide progress updates to the Park District.

2. *Data Gathering* –ERA will acquire available information from various sources including the following items:
 - 2.1. Review as-built drawings provided by District and plats of surveys data
 - 2.2. Request private utility atlases from utility companies
 - 2.3. Request public utility atlases from City
 - 2.4. County tax maps and aerials
3. *Permeable Pavers vs. Asphalt Evaluation* – ERA will provide a proposed estimate of construction costs analysis for the use of Permeable Pavers vs. Asphalt parking lots. This information will be presented in report form and broken out as Main Parking Lot, Alternate 1 Parking Lot, and Alternate 2 Parking Lot.
4. *Topographic Measurement and Base Plan* – *Topographic measurement will include the areas identified with the dashed red lines as indicated on Exhibit 1 Central Athletic Complex Parking Lots. The topographic measurements will be completed by ERA and combined with the utility atlas information and as-built information from others to form one base plan drawing. This drawing will be the basis for planning and alternative designs and construction documents.*
5. *Site Planning* – ERA will work together with the District to collaborate on two viable alternatives to Alternate Parking Lot 1 reconfiguration including budgetary cost opinions. Once the final layout is approved by the District. ERA will utilize the approved layout for the preparation of the engineering drawings.
6. *Stormwater Detention Design/Management Report* – *If the approved concept layout results in the need for stormwater detention, this task includes the effort required to design, prepare plans, prepare the stormwater management report, and permit the detention facility.*
7. *Engineering Design and Construction Documents* – An engineered site plan will be prepared based upon the approved concept plan. The plans and construction specifications will be prepared on standard 24" by 36" plan sheets according to the District's standard format. At 75% (Permit), 95% (Final) and 100% (Bid/Construction) completion Plan sets will be prepared and distributed. The following plan sheets are anticipated:
 - 7.1. Cover Sheet and Location Map
 - 7.2. General Notes
 - 7.3. Existing Conditions & Demolition
 - 7.4. Layout
 - 7.5. Utility and Geometry
 - 7.6. Grading and Erosion Control
 - 7.7. Landscaping Restoration
 - 7.8. Construction Details

An Engineer's Opinion of Construction Costs will be updated and included for the 75%, 95% and 100% submittal. The project will be let under a single contract. Parking

Lot Alternate 1 and Parking Lot Alternate 2 will be broken into two alternates for bidding purposes.

8. *Permitting Assistance** – ERA will assist the District in the preparation of the permit application(s). This task includes the work necessary to prepare the initial submittal and one plan revision to address the various agency comments. The project will include all the parking lots under a single permit submittal. Permits anticipated for this project include:
- 8.1. City of Wheaton Site Development Permit
 - 8.2. IEPA NOI and Stormwater Pollution Prevention Plan

*These tasks include one (1) revision to the plans based on permit comments from review agencies. Any additional revisions, changes, or modifications of the plan except as specifically noted are not included. Due to the nature of the governmental review process, the exact scope of final engineering services is unknown until the review agencies complete their review of the submitted documents. Time relating to the revisions of engineering plans based on regulatory agency review is unknown and uncertain at this time and if any, will be invoiced extra on an hourly basis based on actual work performed on the project.

SERVICES NOT INCLUDED

Only services specifically described in this proposal are included in our scope of work. The following are specifically excluded, although they may be added as a contract amendment at a future date for an agreed additional fee.

- Meetings, except as specifically noted
- Presentation at Public Meetings
- Boundary Plat of Survey
- Stormwater Management Report, except as noted
- Permit Fees
- Wetland Mitigation and Delineation Services
- Tree Species and Condition Survey
- Landscape Design
- Variance Procedures
- Design of Sanitary and Water Services
- Floodplain Analysis or Modeling
- Traffic Planning and Analysis
- Design of Offsite utilities or roadways
- Structural Design
- Architectural Services
- Geotechnical Engineering
- CCDD Testing and Documentation
- LEED Criteria and Design
- Photometric and Lighting Design
- Irrigation Design
- Plat of Easements
- Construction Observation
- Construction Layout
- Bidding Assistance
- As-Built Survey, Record Drawings, or As-Built Mark ups

SCHEDULE

ERA has the qualified staff and resources available to fully staff the project for the duration of the anticipated schedule. ERA will assign staff resources required in order to have permitted bid documents completed by late fall 2024. The work described above is anticipated to be performed according to the schedule outlined below. If the project schedule or scope of services changes, ERA has additional staff and resources available to accommodate the project schedule. Delays beyond six months in the schedule may result in the increase in hourly rates associated with ERA standard billing rates. The milestone tasks described below reflect the anticipated schedule for this project.

1. Project Kick-off	April 2024
2. Data Gathering and Base Plan Preparation	May 2024
3. Topographic Measurement	May 2024
4. Permeable Pavers vs. Asphalt Evaluation	May 2024
5. Prepare Alternative Layout Concepts	June 2024
6. Submit 75% Final Engineering Plans	August 2024
7. Submit Permit Documents	August 2024
8. Submit 95% Final Engineering Plans	October 2024
9. Resubmit Permit Documents	October 2024
10. Submit 100% Bid Documents	November 2024

SCHEDULE OF FEES

ERA is pleased to submit this Schedule of Fees to perform the work as described in our proposal.

WORK ITEM	FEE
Meetings/Coordination/Project Administration	\$ 4,500
Data Gathering	\$ 1,000
Permeable Pavers vs. Asphalt Evaluation	\$ 1,500
Topographic Measurement and Base Plan	\$ 5,900
Site Planning	\$ 2,100
Engineering Design and Construction Documents	\$ 11,000
Permitting Assistance	\$ 2,500
Subtotal:	\$ 28,500
ERA Direct Costs	\$ 330
Total:	\$ 28,830
X. Stormwater Detention Design/Management Report	\$ 3,200

The costs associated with the base services included in this proposal will be billed at an hourly basis, not-to-exceed fee of \$28,830 based upon the provided schedule.

Direct costs/reimbursable expenses including printing costs, mileage and postage will be charged at the actual rate incurred plus 0.0 (%) zero percent. Fees for services beyond the scope of this proposal are compensated for on an hourly basis in accordance with the scheduled hourly rates.

We appreciate the opportunity to submit this proposal and trust that it meets with your approval. If acceptable, please sign the proposal where indicated below and return one (1) copy for our files. Receipt of the executed proposal will serve as authorization to proceed with the project. The attached General Terms and Conditions are expressly incorporated into and are an integral

part of this proposal for engineering services.

If you have any questions, please contact me at 630.393.3060 or jmayer@eraconsultants.com.

Sincerely,
ENGINEERING RESOURCE ASSOCIATES, INC.

A handwritten signature in black ink, reading "John F. Mayer". The signature is written in a cursive, flowing style.

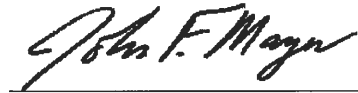
John F. Mayer, P.E., C.F.M.
Principal

Exhibit 1

Acceptance & Authorization Form – February 15, 2024, Proposal
Central Athletic Complex Parking Lots Improvement Project

Engineering Resource Associates, Inc.

WHEATON PARK DISTRICT



Authorized Signature
John Mayer, Principal
Printed Name and Title

3S701 West Avenue
Suite 150
Warrenville, Illinois 60555
630-393-3060 t, 630-393-2152 f



Authorized Signature
Michael J. Bernard Executive Director
Printed Name and Title

5/7/2024

Date

Please Provide Contact Information:

Mailing Address:

(please provide street address for UPS deliveries)

Telephone & Facsimile Numbers:

Email Address:

INVOICES should be sent via:

If different than above address,
invoices should be addressed to:

Invoice Email Address (if different than above):

Note any billing procedures/forms:

Email ☐ USPS Mail ☐ Email & USPS Mail ☐

Attn:

Exhibit 2

Engineering Resource Associates, Inc.
 2023-2024 Charges for Professional Services
 April 1, 2023 through March 31, 2024

Staff Category	Average Hourly Billing Rates
Professional Engineer VI	\$234.00
Professional Engineer V	\$206.00
Professional Engineer IV	\$187.00
Professional Engineer III	\$165.00
Professional Engineer II	\$144.00
Professional Engineer I	\$125.00
Structural Engineer IV	\$207.00
Structural Engineer III	\$250.00
Staff Engineer III	\$134.00
Staff Engineer II	\$110.00
Staff Engineer I	\$103.00
Engineering Technician VI	\$150.00
Engineering Technician V	\$134.00
Engineering Technician IV	\$111.00
Engineering Technician III	\$103.00
Engineering Technician II	\$79.00
Engineering Technician I	\$59.00
Engineering Intern III	\$80.00
Engineering Intern II	\$60.00
Engineering Intern I	\$51.00
Ecological Services Director	\$169.00
Environmental Specialist IV	\$172.00
Environmental Specialist II	\$114.00
Environmental Specialist I	\$91.00
Professional Surveyor II	\$177.00
Professional Surveyor I	\$155.00
Surveyor IV	\$135.00
Surveyor III	\$114.00
Surveyor II	\$91.00
Administrative Director	\$163.00
Administrative Staff IV	\$123.00
Administrative Staff III	\$91.00
Administrative Staff II	\$71.00
Administrative Staff I	\$66.00

Direct Costs will be invoiced per contract terms.

Engineering Resource Associates, Inc.

GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAWS:** Engineering Resource Associates, Inc. (Engineer) will strive to exercise usual and customary professional care in his efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

2. **DESIGNATION OF AUTHORIZED REPRESENTATIVE:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
3. **STANDARD OF PRACTICE:** The Engineer will strive to conduct services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
4. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with Articles previously set forth by Item 1. of this Agreement, together with the laws of the State of Illinois.
5. **RESPONSIBILITY OF THE ENGINEER:** Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.
6. **CLIENT'S RESPONSIBILITIES:** The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, to the extent arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such

insurance shall include products and completed operations and contractual liability coverages, shall be primary and non-contributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

7. **INFORMATION PROVIDED BY OTHERS:** The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
8. **CHANGES:** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
9. **DOCUMENTS DELIVERED TO CLIENT:** Drawings, specifications, and reports prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of

inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

10. **REUSE OF DOCUMENTS:** All Project Documents including but not limited to reports, original boring logs, field data, field notes, laboratory test data, calculations, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.
11. **FORCE MAJEURE:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
12. **RELATIONSHIP BETWEEN ENGINEER AND CLIENT:** Engineer shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client.
13. **SUSPENSION OF SERVICES:** Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.
14. **TERMINATION:** This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
15. **SUCCESSORS AND ASSIGNS:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
16. **ENTIRE UNDERSTANDING OF AGREEMENT:** This Agreement represents and incorporates the entire understanding of the

parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

- 17. AMENDMENT:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
- 18. PAYMENT:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in Item 13 of this Agreement. Payments due Engineer are not contingent upon project approval or project financing and are the sole responsibility of the Client. If an invoice for work performed by Engineer remains unpaid sixty (60) days from the date of the invoice and, if there is no written resolution of payment from the client during the sixty (60) day period, Engineer will stop all work on the assignment.
- 19. INDEMNIFICATION:** Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees to the extent caused by Engineer's negligent acts, errors or omissions in the performance of professional services under this Agreement. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement. In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage. Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.
- 20. LIMIT OF LIABILITY:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or

arising, unless otherwise prohibited by law.

21. **NOTICES:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
22. **ACCESS AND PERMITS:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
23. **WAIVER OF CONTRACT BREACH:** The waiver of one party of any breach of the Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
24. **OPINIONS OF PROBABLE COST:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his opinions of probable Project Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
25. **CONSTRUCTION OBSERVATION CLAUSE:** The Owner will include the following clause in the construction contract documents and Owner agrees not to modify or delete it:

Kotecki Waiver: Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Workers Compensation Act, court interpretations of said Act or otherwise; and agrees to indemnify and defend Owner and Engineer and their agents, employees and consultants (the "Indemnities") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the indemnities may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the indemnities' own negligence.
26. **SEVERABILITY OF INVALID PROVISIONS:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, county or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
27. **HAZARDOUS MATERIALS:** It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of Engineer's services, Engineer may at his option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

28. **RIGHT OF ENTRY:** Client hereby grants Engineer and its subcontractors or agents the right to enter from time to time property owned by Client and/or other(s) in order for Engineer to fulfill the scope of services included hereunder. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this Agreement. Client also understands that the discovery of certain hazardous conditions and/or taking preventive measures relative to these conditions may result in a reduction of the Property's value. Accordingly, Client waives any claim against Engineer and its subcontractors or agents, and agrees to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials. In addition, Client agrees to compensate Engineer for any time spent or expenses incurred by Engineer in defense of any such claim with compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy. Engineer shall not be liable for damage or injury from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to Engineer's attention in writing and correctly shown on the diagram(s) furnished by Client to Engineer.
29. **SAMPLES:** Soil, rock, water and/or other samples obtained from the Project site are the property of Client. Engineer shall preserve such samples for no longer than sixty (60) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from Engineer's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which Engineer is exposed, Client agrees to waive any claim against Engineer, and to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss arising from containing, labeling, transporting, testing, storing, or other handling of contaminated samples. Client also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim, with such compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy.

END OF GENERAL TERMS AND CONDITIONS

