

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into March 30, 2023, by and between the Wheaton Park District, 102 E. Wesley St., Wheaton, IL 60187, hereinafter referred to as the "Owner" and Engineering Resource Associates (ERA), 3S701 West Ave, Ste 150, Warrenville, IL 60555, 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 related to the development of the 5-12 year old playground at Play For All, all as more fully described in the Consultant's March 16, 2023 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 fourteen thousand, two-hundred and fifty dollars (\$14,250), which sum includes all fees of Consultant and its subcontractor(s)/subconsultant(s), costs and expenses to complete the Work. No change in scope or cost of the Work will be effective unless a written change order is executed by Owner and Consultant. Within 30 days of submitting its final report, Consultant shall invoice Owner. Owner will make payment in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*). Acceptance of final payment by the Consultant, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment.

3. TERM OF WORK. Consultant shall complete tasks according to the following milestones:

- a. Stormwater Management Report and Permit submittal to be completed by June 1, 2023;
- b. As- built survey following construction to be completed by June 1, 2024

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

ENGINEERING RESOURCE ASSOCIATES

  
John Mayer, Vice President

WHEATON PARK DISTRICT

  
Michael Benard, Executive Director

## **EXHIBIT A**

### **Insurance Requirements**

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

**1. General Liability:** Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing similar coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing similar coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

**2. Automobile Liability:** Consultant shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto including owned, hired, and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

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

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

## **General Insurance Provisions**

**1. Evidence of Insurance:** Prior to beginning work, Consultant shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement, or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Consultant from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. Consultant shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

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

**3. Cross-Liability Coverage:** If Consultant's liability policies, except Professional Liability, do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

**4. Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to the Owner.

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

Sent via email to Steve Hinchee [shinchee@wheatonparks.org]

March 16, 2023

Steve Hinchee  
Wheaton Park District  
Parks Services Center  
1000 Manchester Road  
Wheaton, Illinois 60187

**Subject:** Proposal for Topographic and Engineering Services for  
Play for All Sensory Garden Age 5-12 Playground  
Wheaton, Illinois

Dear Steve:

Engineering Resource Associates, Inc. (ERA) is pleased to submit this proposal for site development engineering services for the new construction of the Age 5-12 playground and associated site work for the Play For All Sensory Garden Playground. The proposal is based upon your request for proposal, our knowledge of the project site, and our experience on similar projects.

#### Project Understanding

The Wheaton Park District in conjunction with the Kiwanis Club of Wheaton, Western DuPage Special Recreation Association and the Forest Preserve District of DuPage County has developed the Play For All Sensory Garden in multiple phases over past years. The park is located in the Village of Lisle. The next anticipated phase to be constructed is the Age 5-12 playground facility. The Wheaton Park District is the lead sponsor of the improvements and intends to purchase the playground equipment and perform some or most of the work with District resources. The District desires to have the equipment and layout designed and permitted by a professional engineer for this next phase of the playground improvement.

The Park District will need to obtain a site development permit through the Village of Lisle. Additionally, a building and stormwater permit will be needed from DuPage County due to the IGA between the Forest Preserve District and DuPage County. Therefore, site engineering plans and a stormwater management report will need to be prepared that reflect the playground elements. The Park District is providing the Landscape design and landscape plan. Sanitary or water service connections are not anticipated for this phase. Impacts to wetlands are not anticipated, however buffer impacts are anticipated and will need to be mitigated. Additionally, previously developments totaled 2,228 square feet of net new impervious area. It is anticipated that the hardscape work proposed as part of this phase will raise the net new impervious area over 2,500 square feet, and Best Management Practices will be required.



### **Scope of Services**

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

- 1.0 Meetings/Coordination
  - 1.1 Kick-off meeting with Park District and other stakeholders
  - 1.2 Coordinate project improvements with Village of Lisle staff, DuPage County staff, and Forest Preserve District of DuPage County staff
- 2.0 Topographic Plan
  - 2.1 Field work to locate observed horizontal and vertical features within the project area
  - 2.2 Preparation of scaled plan of existing conditions in PDF and AutoCAD format.
- 3.0 Wetland Delineation Update

ERA will provide an updated wetland delineation for the wetlands adjacent to the new playground. ERA will stake wetlands with pin flags and/or marking tape labeled "wetland" and update the previous wetland delineation report in accordance with current Federal wetland methodology and DuPage County requirements. The flags will be measured using a handheld GPS device with sub-meter accuracy.
- 4.0 Site Development Plan Set
  - 4.1 Prepare Geometric Plan showing the proposed playground equipment, playing surfaces and site improvements.
  - 4.2 Prepare Grading and Drainage Plan
  - 4.3 Size BMP and coordinate landscape plan with District
  - 4.4 Prepare of Sedimentation and Erosion Control Plan
  - 4.5 Prepare buffer impact and mitigation plan



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5.0 Stormwater Management Report

- 5.1 Obtain and review the Stormwater Management Report prepared for the most recent previous phase.
- 5.2 Update the Stormwater Management Report to reflect the new improvements.

6.0 Permit Assistance\*

- 6.1 Assist the District in the preparation of the General Conditions permit.
- 6.2 Provide engineering documentation to accompany site development permit application submittal
- 6.3 Prepare stormwater management report required for permit.
- 6.4 Permits/concurrence reviews anticipated through:
  - a. Forest Preserve District of DuPage County
  - b. DuPage County Building & Stormwater
  - c. Village of Lisle
  - d. US Army Corps of Engineers – Letter of No Objection

7.0 As-Built Survey

- 7.1 Perform field survey to locate park improvements and grading work.
- 7.2 Prepare updated topographic plan of as-built conditions signed and stamped by a professional engineer.
- 7.3 Any design modifications and preparation of additional as-built documents required to address non-conforming construction issues will be charged hourly.

\* These tasks include one (1) revision to the plans and stormwater report based on permit comments from the 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 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.

**Schedule**

The work described in this agreement will be performed as expeditiously as weather and other physical conditions permit. The Engineer shall not be liable to the Owner, if delayed in, or prevented from performing the work as specified herein through any cause or causes beyond the control of the Engineer and not caused by his own fault or negligence including acts of God, or the public enemy, inclement weather conditions, acts of the government after the effective date of this agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

**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.

- Zoning or Variance changes
- Boundary Survey
- Floodplain/Floodway modeling
- Floodplain fill conditions
- Bridge modifications
- IEPA Notice of Intent
- Landscape design
- Drain tile Investigation
- As-Built Survey

**Fees**

The cost associated with the services included in this proposal will be invoiced on a phased fixed fee basis according to the following amounts (Exhibit 2).

Scope of Work:

1. Meetings/Coordination	\$ 500
2. Wetland Delineation Update	\$ 2,000
3. Topographic Plan	\$ 1,750
4. Site Development Plan Set	\$ 4,250
5. Stormwater Management Report	\$ 1,650
6. Permitting Assistance (Budget)	\$ 3,100
Total:	\$13,250

Fee Budget for construction related services are as follows:

7. Construction Phase Engineering (Budget)	\$ 1,000
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Direct costs/reimbursables including printing costs, mileage and postage will be charged at the actual rate incurred plus ten percent.

Additional services, not included in this proposal, will be added to the contract through a change work order submitted to the client for approval, prior to beginning work. The contract limit will be adjusted to include the budget for the additional services in the change work order.

Invoices will be issued monthly reflecting the percent of the project completed as of the "services through" date on the invoice. Any unpaid ERA invoices over 60 days old must be paid in full prior to our release of the project's final deliverable.

Please send payment with invoice number included to:  
3s701 West Ave., Suite #150, Warrenville IL 60555

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 (Exhibit 1) and return one (1) copy for our files. Receipt of executed proposal will serve as authorization to proceed with the project to the full extent of the contract. The attached General Terms and Conditions are expressly incorporated into and are an integral part of this proposal for civil engineering and land surveying services.

If you have any questions, please contact me at 630-393-3060 or [jmayer@eraconsultants.com](mailto:jmayer@eraconsultants.com).

Sincerely,  
ENGINEERING RESOURCE ASSOCIATES, INC.  
WARRENVILLE



John F. Mayer, PE, CFM  
Vice President

JFM/jan

Attachments/Enclosure

Exhibit 2

**Engineering Resource Associates, Inc.**  
**2022-2023 STANDARD CHARGES FOR PROFESSIONAL SERVICES**  
 April 1, 2022 THROUGH March 31, 2023

<b>Staff Category</b>	<b>Hourly Rate</b>
Professional Engineer VI	\$245.00
Professional Engineer V	\$225.00
Professional Engineer IV	\$191.00
Professional Engineer III	\$167.00
Professional Engineer II	\$146.00
Professional Engineer I	\$128.00
Structural Engineer IV	\$210.00
Structural Engineer III	\$250.00
Staff Engineer III	\$135.00
Staff Engineer II	\$110.00
Staff Engineer I	\$102.00
Engineering Technician VI	\$152.00
Engineering Technician V	\$138.00
Engineering Technician IV	\$117.00
Engineering Technician III	\$101.00
Engineering Technician II	\$81.00
Engineering Technician I	\$60.00
Engineering Intern III	\$83.00
Engineering Intern II	\$63.00
Engineering Intern I	\$54.00
Ecological Services Director	\$171.00
Environmental Specialist IV	\$176.00
Environmental Specialist II	\$120.00
Environmental Specialist I	\$92.00
Professional Surveyor II	\$180.00
Professional Surveyor I	\$162.00
Surveyor IV	\$129.00
Surveyor III	\$111.00
Surveyor II	\$90.00
Administrative Director	\$165.00
Administrative Staff IV	\$123.00
Administrative Staff III	\$96.00
Administrative Staff II	\$87.00
Administrative Staff I	\$69.00



**ENGINEERING**  
 RESOURCE ASSOCIATES

**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, country 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**



