

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT FOR ENGINEERING SERVICES (hereinafter referred to as the "Agreement"), made this Friday day of November 11, 2017, by and between the Wheaton Park District, an Illinois unit of local government with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois 60187 (the "Park District") and Engineering Resource Associates, an Illinois corporation, with its principal place of business at 3s701 West Ave. Suite 150, Warrenville, Illinois 60555 (the "Consultant"). Park District and the Consultant are hereinafter sometimes individually referred to as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Park District desires the Consultant to perform certain services for the Park District in connection with the Park District's Investigate and modify existing poor drainage areas within the park at Prairie Path Park, 602 W. Park Ave, Wheaton, IL 60189 (the "Project"), as detailed in the Consultant's Scope of Services dated November 2, 2017, attached hereto and incorporated herein as Exhibit A (the "Scope of Services"); and

WHEREAS, the Park District wishes to retain the Consultant and the Consultant wishes to provide the services to the Park District described hereunder based on the terms and conditions set forth in this Agreement.

WITNESSETH

NOW THEREFORE, in exchange for consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, the Park District and the Consultant agree as follows:

1. Consulting Services. The Park District hereby hires Consultant and Consultant hereby agrees to provide engineering services, upon the terms and conditions set forth in this Agreement and the Scope of Services (the "Services"). Consultant shall thoroughly review the Park District's program and other information furnished by the Park District and any other information which the Consultant deems necessary or advisable to determine the nature and extent of, and develop solutions to resolve, any technical or other difficulties or problems in implementing the Project and achieving successful Project completion consistent with the Park District's stated needs, goals and objectives and the Project requirements. As part of this process, the Consultant will visit the Project site and become thoroughly familiar with existing conditions, including activities and uses which will continue while the Project is in progress. The Consultant shall also review and ascertain governmental requirements applicable to the Consultant's Services and the design and construction of the Project including ascertaining timing considerations for submissions to and review by such entities. The Consultant shall

notify the Park District promptly in order not to adversely affect the proposed Project schedule, of (a) any inconsistencies discovered in the information and (b) any information or consulting services that may be reasonably needed for the Project.

Consultant's Services shall include Services made necessary by (a) failure of performance of a contractor under any contract for construction, when such defects or deficiencies in the work, or failure of performance resulted from Consultant's negligence or errors or omissions in the engineering plans which it provided for the Project, or (b) breach of the Consultant's duties or obligations under this Agreement.

2. Contract Documents. The Contract Documents consist of this Agreement between the Park District and the Consultant, the Scope of Services and addenda issued prior to the execution of this Agreement, if any, and any modifications made in writing and endorsed by the Parties after the execution of this Agreement. Except as provided herein, all of the terms, conditions and specifications contained in the Contract Documents are incorporated herein. The General Terms and Conditions included in Consultant's Proposal, and any references to the same in Consultant's Proposal, are hereby rejected and are not incorporated as part of this Agreement. Notwithstanding anything to the contrary, the Contract Documents, except the provisions of Consultant's Proposal which are expressly rejected in accordance with paragraph, constitutes the entire agreement between the Parties. In the event of conflict between or among the provisions of the foregoing documents relative to each phase of the Project, the provisions most favorable to the Park District shall control.

3. Term. Consultant shall complete all Services on or before December 31, 2018.

4. Performance of Work. The Consultant agrees to perform faithfully, industriously, and to the best of the Consultant's ability, experience, and talents, in accordance with generally accepted standards of professional skill and care among recognized industry experts engaged in similar services, all of the duties described in the Contract Documents or as otherwise required by the express and implicit terms of this Agreement, to the reasonable satisfaction of the Park District. The Consultant shall perform all of its duties hereunder according to the Park District's requirements and procedures and in compliance with all applicable federal, state and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The Park District shall be the sole judge of whether the Consultant's duties are performed satisfactorily.

5. Evaluations of the Construction Work. Consultant shall visit the Project site during construction in accordance with Consultant's Proposal in order to supervise the progress and quality of the work, and to determine if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the engineering plans. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. After each site visit, the Consultant shall provide the Park District a written report about the progress and quality of the work, and report to the Park District (a) any deviations from the engineering plans and from the most

recent construction schedule submitted by the contractor, and (b) any defects and deficiencies in the work.

6. Payment for Services.

a. The Park District agrees to compensate the Consultant for providing the Services in the amount of four thousand, two hundred and 00/100 Dollars (\$4,200.00) (the "Consultant's Fee"). The Consultant's Fee is based on the following amounts:

Base Services:

1. Environmental Services	\$1,500
2. Existing Conditions Survey	\$1,100
3. Plan Development & Cost Estimate	<u>\$1,600</u>

Base Services Total: \$4,200

b. The Consultant shall invoice the Park District on a monthly basis for all Services provided by the Consultant to the Park District for the preceding month. Payment of said invoices, and any late payment penalties, shall be governed by the applicable provisions of the Local Government Prompt Payment Act (50 ILCS 505 *et seq.*).

c. Prior to final payment to Consultant, the following conditions shall be fulfilled by Consultant:

i. Consultant shall have made, or caused to have been made, all corrections and completion in the Consultant's Services which are required to remedy any defects therein or obtain compliance with this Agreement. Consultant shall, if required by the Park District, deliver a certificate to the Park District certifying such matters the Park District may reasonably require.

ii. Consultant will provide Park District releases and waivers of lien from Consultant and Consultant's consultants and sub-consultants for the performance of the Services.

iii. Consultant shall have delivered to the Park District all deliverables required by this Agreement.

7. Reimbursable Expenses. Consultant's reimbursable expenses will be charged at the direct cost.

8. Additional Services. Except for this Agreement, there shall be no other basis for compensation for services or reimbursement for expenses rendered on behalf of the Project by Consultant ("Additional Services") unless otherwise mutually agreed upon by the Parties. In the event any other Additional Services are required, Consultant shall notify the Park District

regarding the nature and extent and cost of any said Additional Services. Consultant shall not perform any Additional Services unless approved in writing in advance by the Park District.

9. Park District Responsibilities. The Park District agrees to provide all materials and other information necessary to or requested by the Consultant reasonably necessary for the Consultant to complete the delivery of the Services by the Consultant in a timely manner.

10. Park District Right to Complete the Services. Consultant shall at its own cost promptly cure any breach of its obligations under this Agreement. Should Consultant refuse or neglect to cure such breach within a reasonable time, taking into consideration the nature of the breach and its impact on the progress or the cost of the work, after receiving reasonable notice requesting such cure from the Park District, then the Park District shall be entitled to cure such breach following additional notice of such intended action to Consultant, and recover the cost of such cure from Consultant. This commitment by Consultant is in addition to and not in substitution for, any other remedy which the Park District may have at law or in equity.

11. Designated Representatives. The Park District hereby designates Michael Benard as the Park District's representative ("Park District's Representative") for all matters for the Park District under this Agreement and with respect to the administration of this Agreement. The Park District's Representative shall be available to the Consultant at all reasonable times for consultation with the Consultant. The Consultant shall confirm to the Park District in writing any decision made by the Park District's Representative. The Consultant hereby designates John R. Brown as the Consultant's Representative ("Consultant's Representative") for all matters for the Consultant under this Agreement and with respect to the Services to be performed by the Consultant for the Park District. The Consultant's Representative shall be available to the Park District at all reasonable times for consultation with the Park District's Representative. The Park District may conclusively rely on the decisions made by the Consultant's Representative, including those which modify this Agreement. Either Party may change its Representative under this Agreement by giving notice to the other Party as provided hereunder.

12. Ownership of Instruments of Service. Any and all documents, including but not limited to, any plans, notes, analysis, and any other documents prepared by the Consultant in the performance of its Services under this Agreement ("Instruments of Service") is work done for hire and ownership of such Instruments of Service vests in the Park District. The Park District retains exclusive property rights including all common law, statutory, federal and other reserved rights in the Instruments of Services, including copyrights.

13. Other Consultants/Sub-Consultants. Park District reserves the right to let other contracts for professional services in connection with the Project. Consultant shall cooperate fully with any other consultants retained by Park District and shall properly coordinate the Services with those services provided by other consultants.

All agreements between Consultant and its consultants and sub-consultants shall be in writing and shall contain such provisions as shall ensure the performance of the Consultant's Services

in accordance with this Agreement. Consultant shall timely pay all sums due to its consultants and sub-consultants in accordance therewith and shall not cause or permit any liens to be placed by any such consultants and sub-consultants against the property or funds of the Park District.

14. Termination. This Agreement may be terminated or suspended by the Park District, in whole or in part, for convenience and without cause upon five (5) days written notice. In the event of such termination, the Consultant will be paid for all approved Services rendered to the date of termination, and upon such payment, all obligations of the Park District to the Consultant under this Agreement shall cease. Furthermore, in the event of such termination, the Consultant shall promptly deliver to the Park District all Instruments of Service generated in the performance of its services under this Agreement up to and including the date of termination.

The Park District shall have the right to terminate this Agreement immediately and without notice upon the Consultant's default of its obligations hereunder or its violation of any federal or state laws, or local regulations or ordinances. Upon termination due to the Consultant's breach of this Agreement, the Consultant shall pay the Park District all reasonable costs incurred by the Park District due to said breach, including the cost of obtaining replacement services. In the event of such termination, payment to the Consultant of any sums earned to the date of such termination shall be in full satisfaction of any and all claims by the Consultant against the Park District under this Agreement, and acceptance of sums paid by the Consultant shall constitute a waiver of any and all claims that may be asserted by the Consultant against the Park District. Furthermore, in the event of such termination, the Consultant shall promptly deliver to the Park District all Instruments of Service generated in the performance of their Services under this Agreement up to and including the date of termination.

If the Consultant is adjudged as bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Consultant's insolvency, or if any provision of the bankruptcy law is invoked by or against the Consultant, then notwithstanding any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, (a) terminate the employment of the Consultant and/or (b) finish the Services by whatever method the Park District may deem expedient. In such case, the Consultant shall not be entitled to receive any further payment until the Services are finished and the Park District may be entitled to recover and deduct from any remaining amounts due Consultant all damages allowed by law.

15. Insurance. The Consultant shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance. The 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 equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured Agreement (including the tort liability of another assumed in a business Agreement). The Park District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Professional Liability Insurance. The 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.

C. Business Auto and Umbrella Liability Insurance. The 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.

D. Workers Compensation Insurance. The Consultant shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If the Park District 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 Agreement, the Consultant waives all rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Consultant's work.

E. General Insurance Provisions

(1) Evidence of Insurance. Prior to beginning work, the Consultant shall furnish the Park District 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 the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested. Failure of the Park District to demand such certificate,

endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Consultant's obligation to maintain such insurance. The Park District shall have the right, but not the obligation, of prohibiting the 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 the Park District. Failure to maintain the required insurance may result in termination of this Agreement at the Park District's option. The Consultant shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

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

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

(4) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, the Consultant may be asked to eliminate such deductibles or self-insured retentions as respects the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

(5) **Sub-consultant.** The Consultant shall cause each sub-consultant employed by Consultant to purchase and maintain insurance of the type specified above. When requested by the Park District, Consultant shall furnish copies of certificates of insurance evidencing coverage for each sub-consultant.

16. **Indemnification.** To the fullest extent permitted by law, the Consultant, its officers, directors, employees, volunteers and agents shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, suits, damages, causes of action, judgment, losses, costs and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), arising from or in connection with the Services performed by the Consultant, its officers, directors, employees, volunteers and agents under this Agreement, including but not limited to any accident, injury, damage, property loss or theft, except to the extent caused by the negligence or omission of the Park District, or arising from or in any way connected with any act, omission, wrongful act or negligence of the Consultant, its officers, director, employees, volunteers and agents. 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 the Park District. The Consultant shall similarly protect, indemnify and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to reasonable legal fees, incurred by reason of the Consultant's breach of any of its obligations under, or the Consultant's default of, any provision of this Agreement.

17. No Liability. The Park District shall not be responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation the Consultant's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to the Consultant's Services and obligations under this Agreement. The Park District shall not be liable for acts or omissions of the Consultant or any of the Consultant's employees, subcontractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of the Consultant.

18. Independent Contractor. The relationship between the Consultant and the Park District is that of an independent contractor. The Consultant shall supply all personnel, equipment, materials, and supplies at its own expense, except as specifically set forth herein. The Consultant shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of the Park District. The Consultant is not entitled to workers' compensation benefits or other employee benefits from the Park District and is obligated to directly pay federal and state income tax on money earned under this Agreement.

19. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District and/or the Consultant, and/or any of their respective officials, officers and/or employees.

20. Laws, Permits, Approvals and Licenses. The Consultant shall comply with all applicable codes, laws, ordinances and regulations of the Park District, the City of Wheaton, DuPage County, the State of Illinois, and the Federal Government. Except as specified in Consultant's Proposal, Consultant shall, at its sole cost and obligation, be responsible for obtaining all permits and licenses required to perform its duties under this Agreement. Consultant shall be responsible to the Park District for any claims, damages, losses and expenses arising from the Consultant's failure to follow applicable laws, codes and regulations in execution of all of Consultant's Services pursuant to this Agreement.

21. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois. In any suit or action arising under this Agreement, the

prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

22. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement, or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

Consultant's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Park District of the engineering plans authored by Consultant or its consultants and sub-consultants, nor shall anything contained in this Agreement be construed as a limitation on, or a waiver of, any remedies which the Park District may have at law or in equity for damages sustained or expense incurred because of, or arising out of, Consultant's errors, omissions, or failure to perform its duties or covenants in accordance with this Agreement. The grant of various rights to the Park District under this Agreement, and/or the failure of the Park District to exercise those rights do not and shall not create any responsibility or liability in the Park District for any error or omission of the Consultant in the provision of its Services.

23. Non-Assignment. This Agreement is non-assignable in whole or in part by the Consultant, and any assignment shall be void without prior written consent of the Park District.

24. Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding.

25. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

26. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

27. Notice. All notices, demands, requests, exercises and other communications required or permitted to be given by either Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by facsimile or deposited in the United States mail, with postage thereon prepaid, addressed to each Party at the following addresses:

If to Consultant: Andrew Kustus, P.E., CFM
Engineering Resource Associates, Inc.
3s701 West Ave, Suite 150
Warrenville, Illinois 60555
Phone: 630-393-3060

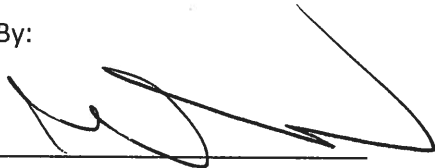
If to the Park District: Executive Director
Wheaton Park District
102 E. Wesley
Wheaton, Illinois 60187
Fax: 630-665-8946

28. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

WHEATON PARK DISTRICT

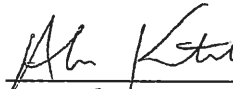
By:



Executive Director/ Secretary
Board of Park Commissioners

ENGINEERING RESOURCE ASSOCIATES

By: Andrew Kustus, PE, CFM



Title: Project Engineer